STATE V. RODRIGUEZ

STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JODERICK RODRIGUEZ,
Defendant-Appellee.

A-1-CA-35627

COURT OF APPEALS OF NEW MEXICO

December 3, 2018

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, Drew D. Tatum, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, John Kloss, Assistant Attorney General, Albuquerque, NM, for Appellant

Bennett J. Baur, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate Defender, Santa Fe, NM, for Appellee

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: STEPHEN G. FRENCH, Judge, HENRY M. BOHNHOFF, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant Joderick Rodriguez was charged with five criminal counts: (1) possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(E)

(2011); (2) tampering with evidence, contrary to NMSA 1978, Section 30-22-5 (2003); (3) driving while license revoked—DWI related, contrary to NMSA 1978, Section 66-5-39.1 (2013); (4) no proof of insurance, contrary to NMSA 1978, Section 66-5-229(C) (1998); and (5) failure to register vehicle, contrary to NMSA 1978, Section 66-3-4 (2007). Defendant moved to suppress all evidence, contending that it was obtained in violation of the misdemeanor arrest rule. The district court granted Defendant's motion, the ruling from which the State now appeals. Guided by our Supreme Court's decision in *State v. Paananen*, 2015-NMSC-031, 357 P.3d 958, we reverse.

BACKGROUND

{2} In May 2015 Defendant was on probation for a DWI conviction. One condition of his probation required that in order to drive a vehicle Defendant must both possess a valid driver's license and drive only vehicles equipped with an ignition interlock device. On May 12, 2015, Steven Hawkins, a court compliance officer, was on duty at a court mandated victim impact panel observing probationers drive into the parking lot. Upon seeing Defendant drive into the parking lot of the library where the victim impact panel was meeting, Hawkins asked Defendant whether his vehicle had an interlock device. When Defendant replied that it did not, Hawkins walked out to the car and confirmed it was not equipped with an interlock device. Hawkins then spoke with a state police captain who was also present for the victim impact panel and who then requested that an officer be dispatched to the location.

{3} New Mexico State Police Officer Ramon Borjas responded to the dispatch call in reference to a probationer suspected of having driven a vehicle in violation of his conditions of probation. Upon his arrival, Officer Borjas encountered Defendant, who admitted to driving on a revoked license. Officer Borjas confirmed that Defendant's license was in fact revoked, at which point he placed Defendant under arrest for driving on a revoked license. After arriving at the Curry County Detention Center with Defendant in custody, Officer Borjas observed Defendant trying to place something beneath the backseat of the police vehicle, which turned out to be a plastic bag containing a white substance that tested positive for crack cocaine after administration of a field test.

{4} Defendant was subsequently charged in a criminal information with the five criminal counts at issue in this appeal. Asserting that his arrest violated the misdemeanor arrest rule, along with the United States and New Mexico Constitutions, Defendant sought suppression of all evidence against him. He argued that the misdemeanor offense of driving on a revoked license did not occur in Officer Borjas's presence, and therefore, his ensuing misdemeanor arrest was illegal. In response, the State argued that there was no violation of the misdemeanor arrest rule because the probation officers were acting as law enforcement officers, and thus their communications and actions fell within the police team exception to the misdemeanor arrest rule. Following an evidentiary hearing on Defendant's motion to suppress, the district court granted the motion and suppressed all evidence obtained as a result of

Defendant's arrest. The district court reasoned that because Hawkins was not a law enforcement officer, the misdemeanor arrest rule was violated.

DISCUSSION

Standard of Review

{5} "Appellate review of a motion to suppress presents a mixed question of law and fact." *Paananen*, 2015-NMSC-031, ¶ 10 (internal quotation marks and citation omitted). We review "factual matters with deference to the district court's findings if substantial evidence exists to support them, and [the appellate courts] review[] the district court's application of the law de novo." *State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183. We do not reweigh the evidence, and we may not substitute our judgment for that of the fact-finder, as long as there is sufficient evidence to support the fact-finder's conclusion. *State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (internal quotation marks and citation omitted).

{6} On appeal, the State argues that the district court misapplied the misdemeanor arrest rule and, as a result, erred in granting Defendant's motion to suppress. Defendant answers that the district court was correct that his arrest violated the misdemeanor arrest rule because Hawkins is not a law enforcement officer and the misdemeanor was committed outside the presence of Officer Borjas. Additionally, the order assigning this case to the general calendar instructed the parties to argue the effect of our Supreme Court's decision in *Paananen* on the misdemeanor arrest rule's current application and its potential effect on this case. The State contends that our Supreme Court abrogated the misdemeanor arrest rule in *Paananen*, and Defendant's arrest was proper and consistent with the reasonableness standards articulated therein. Defendant contends that even if the misdemeanor arrest rule is no longer valid, his arrest was still unreasonable because no exigency existed to arrest him without a warrant.

The Misdemeanor Arrest Rule and *Paananen*

{7} We begin by briefly explaining that which formed the basis of the district court's ruling and *Paananen*, as is necessary to determine the analytical framework applicable to the facts of this case. The misdemeanor arrest rule "provides that a police officer may make a warrantless arrest for a misdemeanor offense if the misdemeanor is committed in the officer's presence." *State v. Lyon*, 1985-NMCA-082, ¶ 10, 103 N.M. 305, 706 P.2d 516. Over the years, our appellate courts have been frequently called upon to analyze the parameters of the misdemeanor arrest rule. *See City of Santa Fe v. Martinez*, 2010-NMSC-033, ¶ 16, 148 N.M. 708, 242 P.3d 275 (holding that the misdemeanor arrest rule does not apply to DWI investigations); *State v. Ochoa*, 2008-NMSC-023, ¶ 7, 11, 143 N.M. 749, 182 P.3d 130 (explaining that the "misdemeanor arrest rule is a holdover from the common law distinction between warrantless arrests for felonies and for misdemeanors" and holding the rule to be inapplicable to investigatory stops). In particular, we have examined the element of the misdemeanor arrest rule that requires the offense to have occurred in the presence of the arresting officer. *See City of Las*

Cruces v. Sanchez, 2009-NMSC-026, ¶ 2, 146 N.M. 315, 210 P.3d 212 (holding that if a warrantless arrest is valid under NMSA 1978, Section 66-8-125 (1978), the offense need not have been committed in the presence of an officer); *Lyon*, 1985-NMCA-082, ¶ 18 (extending the "in the presence of" requirement to situations where one officer personally observes the offense and communicates such to another officer who arrests the misdemeanant within a reasonable time of receiving the information).

{8} Against this backdrop but without mentioning the misdemeanor arrest rule by name, our Supreme Court in *Paananen* analyzed a warrantless arrest that stemmed from a misdemeanor shoplifting incident. *See* 2015-NMSC-031, ¶ 2. Surveillance cameras at a retail store taped the defendant placing items under his jacket and then leaving the store. *Id*. The store's loss prevention team apprehended the defendant, returned him to the store, immediately called the police, and placed the defendant's possessions on the table in the back room of the store. *Id*. After arriving at the scene, two police officers reviewed the video tape from the surveillance cameras. *Id*. ¶ 24. One police officer handcuffed the defendant and another police officer searched the defendant's backpack and other possessions, discovering drugs and drug paraphernalia. *Id*. ¶¶ 3-4. The defendant was charged with shoplifting and possession of a controlled substance and possession of drug paraphernalia and moved to suppress the evidence discovered during the search, arguing that the warrantless arrest preceding the search was unlawful. *Id*. ¶¶ 4-5.

{9} Our Supreme Court upheld the legality of the warrantless arrest based upon (1) the arrest having occurred on the scene of the crime, (2) the officer having probable cause to believe a misdemeanor had been committed (given the arresting officer's review of the video tape and the evidence of shoplifting displayed on the table upon the officer's arrival), and (3) the existence of exigent circumstances that precluded the officers from first obtaining a warrant. *Id*. ¶¶ 24, 27-28. Importantly, *Paananen* makes it clear that "the overarching inquiry in reviewing warrantless arrests is whether it was reasonable for the officer not to procure an arrest warrant[.]" *Id*. ¶ 27 (alteration, internal quotation marks, and citation omitted). "[A] warrantless arrest supported by probable cause is reasonable if some exigency existed that precluded the officer from securing a warrant." *Id*. (internal quotation marks and citation omitted). If "sufficient exigent circumstances make it not reasonably practicable to get a warrant, one is not required." *Id*.

{10} Thus, *Paananen* appears to provide a different evaluative structure—apart from the misdemeanor arrest rule—applicable to warrantless arrests, even for those resulting from events not directly observed by the arresting officer. Stated plainly, *Paananen* instructs that when there exists probable cause and exigent circumstances such that it is reasonable for an officer not to undertake the additional process of procuring an arrest warrant, a warrantless misdemeanor arrest is proper. *See id.*¶ 28 ("The same principle of probable cause plus exigent circumstances justifies an arrest for misdemeanor shoplifting made at the scene of the crime.").

Analysis

{11} We therefore determine that the key question for this Court in light of *Paananen* is whether Defendant's misdemeanor arrest was supported by probable cause plus exigent circumstances such that his warrantless arrest was justified. We answer this question in the affirmative. In so doing, we need not address the parties' arguments as to whether the misdemeanor arrest rule was or was not violated.

{12} "Probable cause exists when the facts and circumstances warrant a belief that the accused had committed an offense, or is committing an offense." *State v. Ochoa*, 2004-NMSC-023, ¶ 9, 135 N.M. 781, 93 P.3d 1286. "There are no bright line, hard-and-fast rules for determining probable cause, but the degree of proof necessary to establish probable cause is more than a suspicion or possibility but less than a certainty of proof." *State v. Trujillo*, 2011-NMSC-040, ¶ 16, 150 N.M. 721, 266 P.3d 1 (internal quotation marks and citation omitted). Thus, probable cause is discussed as existing within the realm of reasonable probabilities, rather than the realms of mere suspicions or certainties. *See State v. Sanchez*, 2015-NMCA-084, ¶ 14, 355 P.3d 795.

{13} The following facts supply sufficient probable cause to support Defendant's warrantless on-the-scene arrest: (1) two conditions of Defendant's probation required that he possess a valid driver's license and that he only drive vehicles equipped with an ignition interlock device; (2) the court compliance officer, Hawkins, witnessed Defendant first hand, drive into the parking lot in a vehicle that was not equipped with an interlock device with the knowledge that driving with such a device was a material condition of Defendant's probation; (3) Hawkins confronted Defendant about whether the vehicle was equipped with an interlock device and Defendant admitted that he drove without one; (4) Hawkins independently inspected the vehicle and confirmed it was not equipped with an interlock device; (5) Defendant admitted to Officer Borjas upon being encountered that he was driving on a revoked license; and (6) Officer Borjas personally confirmed that Defendant's license was in fact revoked. We evaluate probable cause "in relation to the circumstances, as they would have appeared to a prudent, cautious and trained police officer." *Ochoa*, 2004-NMSC-023, ¶ 9 (internal quotation marks and citation omitted). Evaluating the circumstances of this case through the lens of Officer Borjas, we determine there was sufficient probable cause to justify him arresting Defendant on the scene without a warrant.

{14} Here, as in *Paananen*, sufficient exigent circumstances made it such that it was not reasonably practicable for Officer Borjas to procure a warrant prior to arresting Defendant. *See Paananen*, 2015-NMSC-031, ¶ 27. Exigent circumstances are not limited to the threat of danger, escape, or lost evidence. *See id.* ¶ 26 ("[T]here are other situations in which an exigency not necessarily amounting to an imminent threat of danger, escape, or lost evidence will be sufficient to render reasonable a warrantless public arrest supported by probable cause under the totality of the circumstances."). In *Paananen*, the Court reasoned that because officers developed probable cause on the scene it was not "reasonably practical" to obtain an arrest warrant because holding the defendant while awaiting a warrant was likely to result in a de facto warrantless arrest, and releasing the defendant only to relocate and arrest him later would be "an expenditure of resources seemingly disproportionate to the crime of shoplifting and a

risk our Legislature has declared unacceptable." *Id.* ¶ 25. "An on-the-scene arrest supported by probable cause will usually supply the requisite exigency." *Id.* ¶ 26.

{15} The same is true of this case. Defendant maintains that his arrest was unreasonable because Officer Borjas had time to get an arrest warrant and therefore, he should have done so. However, the Court in *Paananen* held the exigent circumstances of the defendant's shoplifting arrest rendered it "not reasonably practicable" to get a warrant and therefore, one was not required. *See Id.* ¶¶ 26-27. Because we have determined that Defendant's warrantless on-the-scene arrest was supported by probable cause, and, as in *Paananen*, Officer Borjas gathered the information that supplied the probable cause upon arriving at the scene, we hold that it was not reasonably practicable for Officer Borjas to procure a warrant, and he was therefore not required to do so.

{16} In granting Defendant's motion to suppress, the district court's ruling was solely based on its view that Defendant's arrest violated the misdemeanor arrest rule and therefore, all evidence obtained as a result warranted suppression. However, we hold that Defendant's arrest for driving on a revoked license was lawful in accordance with our Supreme Court's ruling in *Paananen*, and the district court erred in suppressing all evidence obtained in connection with Defendant's arrest.[1]

CONCLUSION

{17} For the foregoing reasons, the district court erred in granting Defendant's motion to suppress. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

{18} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

STEPHEN G. FRENCH, Judge

HENRY M. BOHNHOFF, Judge

1We note that the district court's suppression ruling was rendered prior to the issuance of *Paananen*.