SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3666-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MIKHAIL GOULDSON, a/k/a
MICHAEL MARTIN,

Defendant-Appellant.

Submitted May 16, 2017 – Decided August 10, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 13-10-0971.

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

Camelia M. Valdes, Passaic County Prosecutor, attorney for respondent (Robert J. Wisse, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Mikhail Gouldson appeals his conviction following a jury trial of possessory weapons offenses. He also appeals his

sentence. More particularly, he argues the court erred by denying his motion to suppress evidence obtained during the search of a motor vehicle, admitting evidence at trial concerning an email address, and refusing his request for a limiting instruction about the email. We affirm the court's denial of defendant's suppression motion, find the court erred in denying his motions for the redaction of the email address and for a limiting instruction, and reverse defendant's convictions and remand for further proceedings.

I.

The criminal charges at issue here arose as a result of a stop of a motor vehicle driven by defendant. The vehicle was searched and a bag containing guns, ammunition, gun accessories and a receipt were found in the truck. Defendant was subsequently charged in an indictment with two counts of second-degree unlawful possession of an assault firearm, N.J.S.A. 2C:39-5(f) (counts one and two),[1] two counts of third-degree possession of a sawed-off shotgun, N.J.S.A. 2C:39-3(b) (counts three and four), and one count of fourth-degree possession of large capacity ammunition

[1] Defendant was originally charged in counts one and two with third-degree unlawful possession of a firearm, but the charges were amended to second-degree offenses.

magazines, N.J.S.A. 2C:39-3(j) (count five). Count four was dismissed at trial.

Defendant's Motion to Suppress Evidence

Defendant moved to suppress the evidence seized from the vehicle. At the evidentiary hearing on the motion, Paterson police officer Miguel Cruz testified that at around 7:00 p.m. on February 7, 2013, he was on patrol in a high crime area, and received a dispatch report that a "heavy set black male" had "brandished a shotgun in the area of 12th Ave and East 32nd." It was reported the perpetrator was in a "[d]ark colored sedan" which had a license plate number starting with "F-1-5." Cruz drove to the area in response to the report.

Thirty minutes later, Cruz saw a blue vehicle with a license plate number beginning with "F-1-5." He followed the vehicle for a short distance and saw it make an abrupt stop and turn into a parking spot without signaling. Cruz effectuated a motor vehicle stop of the vehicle. Cruz also observed another vehicle make an abrupt stop about three car lengths in front of the blue vehicle.

Cruz approached the driver's side window of the blue vehicle and saw that the driver matched the description of the individual reported to have brandished the weapon. The driver, who was later identified as defendant, was alone in the vehicle. Cruz observed that defendant appeared nervous and was wearing what Cruz

recognized as a "quick-release rifle sling" over his shoulder and across his torso. Cruz asked defendant about the sling and defendant said, "he always [drove] with [it] on."

Cruz observed about five individuals exit the vehicle that had abruptly stopped in front of defendant's vehicle. According to Cruz, the individuals were larger in stature than him, and "appeared to be approaching [his] location." They stood approximately fifteen to twenty feet away from defendant's vehicle and looked toward Cruz. He concluded the individuals "seemed to have some type of interest or know [] defendant."

Cruz asked defendant for his driver's license and the paperwork for the vehicle but, after looking through the vehicle for a minute or two, defendant was unable to provide them. Cruz asked defendant to turn off the car and take out the keys, and defendant placed the keys on the dashboard. Cruz then secured defendant by placing him in handcuffs as defendant sat in the driver's seat. Cruz requested backup, and officer James DiPiazza responded.

Cruz asked defendant his name, date of birth, and address. Defendant told Cruz to contact Detective Stoltz at the Passaic County Prosecutor's Office. DiPiazza stayed with defendant, while Cruz contacted Stoltz, who said that defendant "[was] a known gang member" and "[was] known to have weapons in his possession."

Cruz returned to defendant's vehicle, shined a flashlight into the car, and saw two spent rifle shell casings in the back seat area. Based on Cruz's observations and the information provided by Stoltz, Cruz believed there was a weapon in the vehicle, and required that defendant exit the vehicle.

Cruz testified he did not believe it was safe to secure the vehicle and have it towed. Cruz did not observe any weapons in the vehicle but testified rifles are "big guns" that would normally be kept in a vehicle's trunk. Cruz used the vehicle's keys or the remote access to open the trunk. He saw what he recognized as a weapons bag, looked inside of the bag, and found a black and tan rifle loaded with a thirty-round ammunition magazine and modified with a "brass catcher"[2] attached to the weapon.

Cruz arrested defendant and placed him in a police car. At that point, the individuals who had exited the other vehicle left the scene. Following defendant's arrest, the vehicle was towed to a secure area. At police headquarters, Cruz found a second rifle in another compartment of the bag, as well as nine thirty-round magazines, 205 rounds of .223 caliber bullets and a speed loader. The bag also contained a receipt from a weapons parts company.

[2] Cruz described a "brass catcher" as a bag that is attached to a weapon to "catch" and collect the brass shell casings ejected from the weapon when it is fired.

After hearing argument, the motion judge found Cruz was a credible witness, and determined that defendant's failure to signal provided justification for the motor vehicle stop. The court also found the anonymous tip about the individual who brandished the gun, Cruz's observations of the vehicle and its license plate, and the vehicle's abrupt stop independently provided a reasonable and articulable suspicion for the motor vehicle stop.

Further, the court found that Cruz's observations that defendant matched the description of the individual reported in the anonymous tip, and that defendant wore an empty rifle sling and appeared nervous heightened Cruz's concern for his own safety. The court determined that Cruz's concern for his safety was also supported by Stoltz's report that defendant was a known gang member who was known to carry weapons, and by the presence of the approximately five individuals who had exited their vehicle and stood nearby. The court found the motor vehicle stop occurred in a high crime area while it was dark, and that Cruz also observed two shell casings in the area of the rear seat of the vehicle.

The court determined that the search of the vehicle's trunk was proper due to the exigent circumstances presented. The court noted that a warrantless search of an automobile is permitted where the motor vehicle stop is unexpected, probable cause for the

search exists, and exigent circumstances are present making it impracticable to obtain a warrant.

The court reasoned that the stop of defendant's vehicle was unexpected because it was the result of quickly unfolding events with no advance planning by the police. The court found the anonymous tip, defendant's failure to produce any paperwork for the vehicle, the empty rifle sling worn by defendant, the information supplied by Stoltz, and Cruz's observation of the two spent shell casings provided probable cause there was a weapon in the vehicle's trunk.

Last, the court determined that the totality of the circumstances presented made it impracticable and unreasonable for Cruz to obtain a telephonic search warrant or wait for a tow truck before searching the vehicle. The court found Cruz's search of the vehicle was objectively reasonable under the circumstances and denied defendant's suppression motion.

Defendant's Pretrial Motion on the Admission of the Receipt

Prior to trial, defendant sought leave to admit the receipt found in the weapons bag seized from the vehicle's trunk. The receipt was issued to A.H.,[3] and appeared to be a February 2, 2013 shipping invoice from "bravocompanyusa.com." The receipt was not

[3] We use initials, rather than the full name on the receipt, to avoid the misidentification of anyone sharing the name.

for the guns or any of the other items found in the trunk, but instead was only for two gun parts. In addition to A.H.'s name, the receipt included his purported street address, phone number and an email address of "RU_Blood_Gang@Yahoo.com."

Defendant sought to introduce the receipt at trial to show that because it was found in the weapons bag, the guns, ammunition and accessories belonged to A.H., and not defendant. Defendant requested that the court admit the receipt with the email address redacted. Defendant argued the email address was prejudicial because it suggested gang membership, and had no probative value because the other information on the receipt showed it was issued to A.H.

The court denied defendant's request, noting it had previously barred the State from introducing testimony that Stoltz said defendant was a gang member. The court found that because A.H. used a "blood gang personal email" address, it was reasonable to assume A.H. "may be a gang member," and that "based upon the information from [] Stoltz" it was reasonable to assume "defendant may also be a gang member and there may be a sharing or interchange of weapons." The court found it would be unfair to the State to redact the email address because defendant intended to rely on the receipt to "cast blame" on A.H., and therefore the receipt should be admitted in its entirety. The court also found that because it

barred the State from introducing Stoltz's report that defendant was a gang member, it would be "unfair to further diminish the State's case" by permitting defendant to introduce a redacted receipt concerning A.H. The court denied defendant's motion.

Defendant's Trial

At trial, defendant did not dispute that the guns, ammunition and other accessories were in the vehicle's trunk. He argued the State did not sustain its burden of proving that he knowingly possessed the items and that, contrary to the officers' testimony, he was not wearing the rifle sling when the vehicle was stopped. Defendant argued the rifle sling had actually been recovered from the trunk with the other items. In support of his argument, defendant relied on the fact that Cruz's police report did not state that defendant said he always wore the sling while driving, and that if defendant had been wearing the rifle sling, Cruz would not have permitted defendant to look through the vehicle for his license and the vehicle's paperwork.

Cruz's trial testimony was consistent with his testimony at the suppression hearing, but he did not testify at trial about the anonymous tip or Stoltz's report about defendant's alleged gang membership and proclivity to possess weapons. Cruz also testified

that the receipt was from Bravo Company USA for gun accessories[4] and that A.H.'s name and an address were listed on the receipt for the billing and shipping information. There was also evidence that it was not defendant's name, address, and telephone number on the receipt, and that the police never investigated A.H. or the information on the receipt.

Cruz first described the email address in response to a question posed by defense counsel during cross-examination. He mentioned the email address a second time in response to a question from the prosecutor on redirect examination. The receipt was admitted into evidence. Cruz also testified the vehicle was registered to M.G.[5] and that her pocketbook, driver's license, and a utility bill in her name were found in the vehicle.

Detective Todd Pearl testified that a search of defendant's apartment occurred at around 12:30 a.m. on the morning following defendant's arrest. M.G. answered the door to the apartment. No items were recovered during the search.[6]

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[4] The receipt was for "a [f]ront site base and a spring rifle M-16 Action."

[5] We employ initials to protect M.G.'s privacy and to avoid any misidentification of the M.G. in this matter with others sharing the same name.

[6] Detective Antonio Urena testified concerning the firearms, ammunition and accessories recovered. At trial, the parties

After the presentation of the evidence, defendant requested that the court provide a limiting instruction that the jury could not use the email address on the receipt to infer the vehicle was a "gang car" or that defendant was a gang member. The judge denied the request, noting her prior ruling denying the request to redact the email address. The judge reasoned that because defendant moved the receipt into evidence, redaction of the email address could leave the impression that A.H. may be a "perfectly law-abiding citizen . . . and the defendant unluckily use[d] the car with the weapons in it." The court reiterated that on balance, it would be unfair to permit defendant to cast doubt on his alleged possession of the guns and ammunition by arguing that A.H. was the owner, without presenting all of the information about A.H. the receipt contained. The court noted the State had indicated it would not argue defendant was a gang member, concluded the jury should consider the evidence as presented, and rejected defendant's request for a limiting instruction.

The jury found defendant guilty of all of the charges in the indictment. Defendant filed a motion for a new trial, claiming the court's denial of his request to redact the receipt and for a

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stipulated there was no evidence defendant had a permit to carry or purchase a handgun or an assault weapon.

limiting instruction was erroneous and deprived him of a fair trial. The judge denied the motion.

The court subsequently sentenced defendant to an aggregate custodial term of eleven years with a seven-year period of parole ineligibility.[7] This appeal followed.

Defendant makes the following arguments on appeal:

> POINT I
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> THE SEARCH OF THE VEHICLE WAS UNCONSTITUTIONAL, AND THEREFORE, THE EVIDENCE DISCOVERED SHOULD HAVE BEEN SUPPRESSED.
>
> POINT II
>
> THE TRIAL COURT'S REFUSAL TO SANITIZE THE HIGHLY PREJUDICIAL EMAIL ADDRESS - "RU-BLOOD-GANG@YAHOO.COM" — ON THE RECEIPT, COUPLED WITH ITS FAILURE TO ISSUE A LIMITING INSTRUCTION REGARDING THIS EVIDENCE DEPRIVED [DEFENDANT] OF A FAIR TRIAL.
>
> A. The Trial Court Erred in Denying the Defense's Request to Redact the Email Address from the Receipt.

[7] The sentence imposed on count two, charging second-degree unlawful possession of an assault weapon, N.J.S.A. 2C:39-5(f), was three years with a three-year period of parole ineligibility. A three-year sentence on a second-degree offense is not an authorized sentence absent a determination pursuant to N.J.S.A. 2C:44-1(f)(2) that it was appropriate to sentence defendant in the range for a crime one degree lower than the offense for which defendant was convicted. The court made no findings supporting a reduction in the sentencing range under N.J.S.A. 2C:44-1(f)(2). Neither the State nor defendant raised the issue concerning the legality of the sentence on appeal. Because we reverse defendant's convictions, it is unnecessary to address the issue further.

B. The Trial Court's Refusal to Issue a Limiting Instruction Constitutes Reversible Error.

II.

Defendant first argues the court erred by denying his motion to suppress the warrantless search of the motor vehicle. Defendant does not dispute there was probable cause to search the vehicle, but instead contends the evidence did not support the court's determination that the vehicle stop was unexpected and that the search was justified because there were exigent circumstances.

In our review of a trial court's ruling on a motion to suppress, we "must uphold the factual findings underlying the trial court's decision so long as those findings are 'supported by sufficient credible evidence in the record.'" State v. Elders, 192 N.J. 224, 243 (2007) (quoting State v. Elders, 386 N.J. Super. 208, 228 (App. Div. 2006)); State v. Handy, 206 N.J. 39, 44 (2011). An appellate court should "not disturb the trial court's findings merely because '[we] might have reached a different conclusion.'" Elders, supra, 192 N.J. at 244 (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

It is only where the court is "thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction [that we will] appraise the record as if [we] were deciding the matter

at inception and make [our] own findings and conclusions." Johnson, supra, 42 N.J. at 162. However, "[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. Lamb, 218 N.J. 300, 313 (2014). Accordingly, "[w]hen, as here, we consider a ruling that applies legal principles to the factual findings of the trial court, we defer to those findings but review de novo the application of those principles to the factual findings." State v. Hinton, 216 N.J. 211, 228 (2013).

The United States and New Jersey Constitutions guarantee the right "of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. The Fourth Amendment and Article 1, paragraph 7 of the New Jersey Constitution both "require[] the approval of an impartial judicial officer based on probable cause before most searches may be undertaken." State v. Patino, 83 N.J. 1, 7 (1980).

Warrantless searches are presumed invalid, State v. Gamble, 218 N.J. 412, 425 (2014), "and the invalidity may be overcome only if the search falls within one of the specific exceptions created by the United States Supreme Court," State v. Hill, 115 N.J. 169, 173 (1989). "Because no warrant was sought for the search and arrest of defendant, the State bears the burden of showing

that the warrantless seizure 'falls within one of the few well-delineated exceptions to the warrant requirement.'" State v. O'Neal, 190 N.J. 601, 611 (2007) (quoting State v. Maryland, 167 N.J. 471, 482 (2001)). "The State has the burden of proof to demonstrate by a preponderance of the evidence that the warrantless seizure was valid." Ibid.

Here, defendant challenges the warrantless search of an automobile. In State v. Pena-Flores, 198 N.J. 6, 28 (2009),[8] our Supreme Court established that a "warrantless search of an automobile in New Jersey is permissible where (1) the stop is unexpected; (2) the police have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) exigent circumstances exist under which it is impracticable to obtain a warrant." The motion court applied that standard here.

As noted, defendant does not claim that there was insufficient probable cause to search the vehicle. He instead argues the search was unlawful because the motor vehicle stop was not unexpected because the officer was looking for a car matching the vehicle defendant was driving. An unexpected motor vehicle stop occurs when it is "unplanned and unforeseen; the police must 'have no

[8] The parties agree that the Pena-Flores standard applies here. The Court modified the standard in State v. Witt, 223 N.J. 409 (2015), but Witt was decided after defendant's arrest and therefore is inapplicable to the search of the vehicle here.

advance knowledge of the events to unfold.'" State v. Minitee, 210 N.J. 307, 320 (2012) (quoting State v. Colvin, 123 N.J. 428, 437 (1991)). "[T]he police cannot, by their actions, create the exigency they later use to justify the search." Ibid.

The record supports the court's finding the motor vehicle stop was unexpected. Although Cruz responded to an anonymous tip, Cruz had no advance knowledge of whether he would find an individual or vehicle matching the description provided, and if so, what he might encounter. He pulled over the vehicle in response to an unanticipated motor vehicle violation, and it was not until he stopped the vehicle that he observed that defendant fit the description provided in the anonymous tip and made other observations providing probable cause for the search. Thus, although Cruz had been looking for a vehicle in response to an anonymous tip providing a description of a car and a partial license plate, he had "no advance knowledge of the events to unfold." Ibid.

Defendant also contends the court erred in finding exigent circumstances permitted the warrantless search. He contends that defendant was in handcuffs prior to the search, the car's trunk was locked, and the individuals in the other car had not become involved. He argues that the officers had sufficient time to obtain a telephonic warrant.

Exigency is determined on a case-by-case basis after a consideration of the totality of the circumstances. Pena-Flores, supra, 198 N.J. at 28. The fundamental inquiry is how the circumstances presented "bear on the issues of officer safety and the preservation of evidence." Id. at 28-29. "[I]t is the compendium of facts that make it impracticable to secure a warrant." Id. at 29. Factors the court may consider in determining whether exigency exists include, for example,

> the time of day; the location of the stop; the nature of the neighborhood; the unfolding of the events establishing probable cause; the ratio of officers to suspects; the existence of confederates who know the location of the car and could remove it or its contents; whether the arrest was observed by passersby who could tamper with the car or its contents; whether it would be safe to leave the car unguarded and, if not, whether the delay that would be caused by obtaining a warrant would place the officers or the evidence at risk.
>
> [Ibid.]

However, these are not "an exhaustive list of the factors that must come into play." Minitee, supra, 210 N.J. at 321.

Here, the court carefully and thoroughly reviewed the totality of the circumstances and determined it was objectively reasonable for the officers to conclude that their own safety and interest in preserving the evidence presented exigent circumstances permitting the warrantless search of the vehicle.

The evidence supports the court's determination. The search occurred at night in a high crime area. Cruz believed weapons might be in the vehicle based on: the anonymous tip, Stoltz's statement that defendant was in a gang and known to possess weapons, the shell casings in the vehicle compartment, and because defendant was wearing an empty rifle sling across his chest. See e.g., State v. Hammer, 346 N.J. Super. 359, 367-71 (App. Div. 2001) (finding exigent circumstances permitting search of vehicle's trunk for weapons where the driver was unable to produce his license, the officer observed hollow bullets fall from the driver's coat, and the officer found a bag of a white powder substance in the car).[9]

There also were approximately five individuals who had been traveling in a car ahead of defendant and who abruptly stopped their car, exited, walked toward Cruz and defendant, and stood

[9] Defendant argues Hammer does not support the court's finding of exigency here because in Hammer we noted that the trunk was unlocked, thereby increasing the potential for the removal of the evidence and risk to the officers if others had access to the weapons in the trunk. The fact that the trunk was unlocked in Hammer was not dispositive of the issue of exigency, and similarly, the fact that the trunk here was locked is also not dispositive. That a trunk may be locked or unlocked is only one factor to be considered as part of the totality of circumstances in assessing whether exigent circumstances permit a warrantless search. "There is no magic formula" to determine exigency; "it is merely the compendium of facts that make it impracticable to secure a warrant." Pena-Flores, supra, 198 N.J. at 29.

close by watching Cruz interact with defendant. Thus, in addition to being in a high crime area, there were others present who may have been able to remove the evidence or jeopardize the officers' safety, and thus a delay may have placed the officers or the evidence at risk. See, e.g., State v. Lewis, 411 N.J. Super. 483, 489-91 (App. Div. 2010) (finding sufficient exigency to justify a warrantless search where the stop occurred at night in a high-crime area in a place where the stop "could be readily observed by persons in the neighborhood, such as the five or six people who congregated in the area after the stop"); cf. State v. Dunlap, 185 N.J. 543, 550-51 (2006) (finding no exigency where the vehicle was not in an area known for drug trafficking, there was no basis to conclude a third person might come and destroy or remove evidence, there were at least ten officers present, the officers had time to obtain verbal authorization to record defendant's conversation with another individual, and noting a stop by only one or two officers "would likely have changed the calculus").

Accordingly, we affirm the court's order denying defendant's motion to suppress the evidence found in the trunk of the vehicle. The record supports the court's findings of fact and its legal conclusion that the warrantless search of vehicle was justified based on the exigent circumstances presented. See Pena-Flores, supra, 198 N.J. at 28.

III.

Defendant also claims the court erred by denying its request to redact the email address from the receipt and by refusing to provide a limiting instruction concerning the email. Defendant argues the email address was irrelevant and unduly prejudicial because it referred to the Bloods gang and may have been used by the jury to infer he was a gang member. He contends the receipt should have been excluded by the court under N.J.R.E. 401 and 403. He also asserts that even assuming the email address was relevant and admissible, the court should have granted his request for a limiting instruction prohibiting the jury from inferring he was a gang member.

A trial court is vested with considerable latitude in determining whether to admit evidence, and that determination will only be reversed on appeal if it constitutes an abuse of discretion. State v. Kuropchak, 221 N.J. 368, 385 (2015); State v. Rose, 206 N.J. 141, 157 (2011); State v. Marrero, 148 N.J. 469, 484 (1997). We will "not substitute [our] judgment for that of the trial court, unless 'the trial court's ruling "was so wide of the mark that a manifest denial of justice resulted."'" Kuropchak, supra, 221 N.J. at 385 (quoting Marrero, supra, 148 N.J. at 484).

Defendant argues the court erred by finding the email address on the receipt was relevant. Relevant evidence must have "a

tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. "When a court decides whether evidence is relevant, 'the inquiry should focus on the logical connection between the proffered evidence and a fact in issue.'" State v. Cole, ___ N.J. ___ (2017) (slip op. at 17) (quoting State v. Bakka, 176 N.J. 533, 545 (2003)). To be relevant, evidence must "be probative of a fact that is 'really in issue in the case,' as determined by reference to the applicable substantive law." Ibid. (quoting State v. Buckley, 216 N.J. 249, 261 (2013)). "Once a logical relevancy can be found to bridge the evidence offered and a consequential issue in the case, the evidence is admissible, unless exclusion is warranted under a specific evidence rule." State v. Burr, 195 N.J. 119, 127 (2008).

All relevant evidence is admissible "[e]xcept as otherwise provided in [the] rules or by law." N.J.R.E. 402. Under N.J.R.E. 403, "relevant evidence may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative evidence." N.J.R.E. 403.

Based on our careful review of the record, we are constrained to conclude that the court missed the mark in finding the email address tended to prove or disprove a fact of consequence in this

matter. Prior to making its decision on defendant's redaction request, the court ruled the State could not introduce any evidence concerning defendant's purported gang membership and the State advised it would not attempt to introduce such evidence or argue that defendant was a gang member.

Defendant sought admission of the receipt for the sole purpose of establishing that the guns and ammunition found in the bag belonged to someone other than himself. However, establishing the receipt pertained to A.H., and not defendant, could only be logically accomplished by comparing the information on it with defendant's personal information. That is, to the extent the information on the receipt could be shown to be different than any known information for defendant, the information demonstrated that the receipt was issued to a person, A.H., who was not the defendant. The fact that the name, address and telephone number on the receipt were different than defendant's tended to prove the receipt was not issued to defendant but instead was issued to A.H.

If evidence had been presented showing that the email address was either different or the same as defendant's email address, it would have tended to prove the receipt was issued to defendant or A.H. But there was no evidence introduced concerning defendant's email address. Therefore, unlike the name, address and telephone number listed on the receipt, there was no evidential basis upon

which the jury could have used the email address to determine if the receipt had any connection to defendant. Thus, the email address had no tendency to establish whether the receipt was issued to A.H. or defendant, and no logical connection to any facts related to the issues at trial.

The court denied the request to redact the email address because it had "sanitized" the State's case by barring evidence that Stoltz reported defendant was a gang member. The court reasoned it would be unfair to the State to permit defendant to introduce the receipt without the jury being able to consider the email address as evidence that A.H. was a gang member and therefore not a "law-abiding citizen." However, the jury was unlikely to consider A.H. a law-abiding citizen in any event, if it concluded that A.H. owned the small arsenal of weapons, including assault firearms, found in the bag.

We reject the court's rationale because, based on the evidence presented at trial, A.H.'s status as a putative gang member or law-abiding citizen did not have a tendency to prove any fact of consequence. The receipt was admitted for the sole purpose of showing it was issued to someone other than defendant and, as a result, the guns found with the receipt belonged to A.H. In our view, the fact that A.H. was a gang member, a law-abiding citizen, or something else lacks any logical connection to whether the

receipt was issued to A.H. instead of defendant. The email address would have been relevant if the State presented competent evidence that defendant was a gang member or otherwise connected to A.H. or his purported gang. However, the court barred the State from directly introducing such evidence, the record is otherwise devoid of it, and the State never claimed that gang membership by either A.H. or defendant tended to prove any element of the crimes charged. We recognize the court's broad discretion in making evidentiary rulings on the relevancy of evidence but where, as here, the evidence does not satisfy the standard, the evidence should have been excluded. See State v. Muhammed, 366 N.J. Super. 185, 202-03, 205 (App. Div. 2004), aff'd in part, rev'd in part, 182 N.J. 551 (2005).

We also find the court erred by denying defendant's request to redact the email address under N.J.R.E. 403. "Evidence claimed to be unduly prejudicial is excluded only when its probative value is so significantly outweighed by its inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the issues in the case." State v. Wakefield, 190 N.J. 397, 429 (2007) (quoting State v. Koskovich, 168 N.J. 448, 486 (2001)), cert. denied, 522 U.S. 1146, 128 S. Ct. 1074, 169 L. Ed. 2d 817 (2008). "[T]he mere

possibility that evidence could be prejudicial does not justify its exclusion." Ibid. (quoting Koskovich, supra, 168 N.J. at 486).

Here, the lack of any relevance of the email address was substantially outweighed by its potential for prejudice. The court denied the motion to exclude the evidence in part to permit the jury to infer that A.H. was a gang member, expressly finding that the email address supported a reasonable assumption that A.H. was a gang member. The court, however, overlooked the risk of potential prejudice to defendant because the email address also supported an inference defendant was a gang member; after all, if defendant was in possession of the contents of the weapons bag, he was also in possession of a receipt, guns and ammunition from a putative gang member.[10]

[10] In its denial of the defendant's motion to redact the email address, the court found the address made it "reasonable to assume that [A.H.] may be a gang member." Relying on the email address and the information provided by Stoltz, the court also found it was reasonable to assume "defendant may . . . be a gang member and that there may be a sharing or interchange of weapons." However, Stoltz's report that defendant was a gang member was not required to support such an inference. As noted, if the jury inferred that A.H. was a gang member based on the email address, it may have reasonably assumed that defendant was a gang member as well. Indeed, the court denied the redaction motion finding that because it prevented the State from introducing direct evidence concerning defendant's putative gang membership, it would be unfair to permit defendant to introduce the receipt without the email address. The court said it was "trying not to have introduction of gang membership, unless . . . defendant seeks to put in the receipt." The court found that the receipt "may suggest that [A.H.] may be

"[T]he mere fact, or even allegation, of gang membership carries a strong taint of criminality." State v. Goodman, 415 N.J. Super. 210, 227 (App. Div. 2010) (quoting United States v. Acosta, 110 F. Supp. 2d 918, 931 (E.D. Wis. 2000)), certif. denied, 205 N.J. 78 (2011). "The average juror would likely conclude that a gang member has engaged in criminal activity," which "has the potential to 'taint' a defendant in much the same way as evidence of actual criminal conduct." Id. at 228; see also United States v. Abel, 469 U.S. 45, 48, 105 S. Ct. 465, 467, 83 L. Ed. 2d 450, 455 (1984) ("It is settled law that the government may not convict an individual merely for belonging to an organization that advocates illegal activity."); State v. Nelson, 155 N.J. 487, 508 (1998) (finding evidence surrounding defendant's membership in a gang was irrelevant to sentencing), cert. denied, 525 U.S. 1114, 119 S. Ct. 890, 142 L. Ed. 2d 788 (1999). But see State v. Torres, 183 N.J. 554, 573 (2005) (finding evidence of the defendant's gang involvement admissible "to show the connection between defendant's actions as the leader of the gang and the actions of the other gang members who actually committed the murder").

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a gang member and may be sharing it." Thus, the court permitted introduction of the email address to support the reasonable inference that A.H. and defendant were gang members sharing the items found in the trunk.

Evidence permitting the inference defendant was a gang member had "the potential to 'taint' defendant in much the same way as evidence of actual criminal conduct," and the evidence should have only been admitted if the requirements of N.J.R.E. 404(b) and the standard established in State v. Cofield, 127 N.J. 328, 338 (1992), were met. Goodman, supra, 415 N.J. Super. at 228.[11] The court recognized that any suggestion defendant was a gang member was prejudicial to defendant. In denying defendant's motion to redact the email address, the court noted that it "sanitized" the State's case of any mention of defendant's putative gang affiliation because it was "highly prejudicial information."

In its earnest effort to be fair to the State, the court allowed the result it sought to avoid. Although it barred the State from introducing any evidence of defendant's alleged gang membership, the court permitted the admission of otherwise irrelevant evidence supporting an inference that A.H. and, by

[11] We do not consider whether the email address should have been excluded under N.J.R.E. 404(b) because defendant has neither raised nor briefed the issue on appeal. See Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001). However, our case law concerning the admission of gang membership evidence under N.J.R.E. 404(b) informs our analysis of defendant's N.J.R.E. 403 argument because it concerns the potential for undue prejudice presented by such evidence. See Goodman, supra, 415 N.J. Super. at 226-27.

extension, defendant were gang members. We agree with the court that evidence supporting the inference that defendant was a gang member posed substantial risk of undue prejudice. For that reason, the email address should have been redacted. See N.J.R.E. 403. The court erred in ruling otherwise.[12]

We next consider whether admission of the email address constituted harmless error, R. 2:10-2, and must determine if its admission was clearly capable of producing an unjust result. State v. Randolph, 228 N.J. 566, 592 (2017). "The harmless error standard . . . requires that there be 'some degree of possibility that [the error] led to an unjust [verdict]. The possibility must be real, one sufficient to raise a reasonable doubt as to whether [it] led the jury to a verdict it otherwise might not have reached.'" State v. R.B., 183 N.J. 308, 330 (2005) (second and fourth alterations in original) (quoting State v. Bankston, 63 N.J. 263, 273 (1973)); see also State v. Macon, 57 N.J. 325, 338 (1971) (finding error is harmless unless there is a reasonable doubt that the error contributed to the verdict). Our determination

[12] Because we conclude the evidence should not have been admitted under N.J.R.E. 401 and should have been excluded under N.J.R.E. 403, it is unnecessary to address defendant's contention that the court erred by failing to provide a limiting instruction, other than to note that an appropriate limiting instruction may have ameliorated the prejudice to defendant from the erroneous admission of the evidence.

of whether an error is clearly capable of producing an unjust result "depends on an evaluation of the overall strength of the State's case." State v. Nero, 195 N.J. 397, 407 (2008) (quoting State v. Chapland, 187 N.J. 275, 289 (2006)); see also State v. Sowell, 213 N.J. 89, 107-08 (2013) (affirming conviction given strength of evidence against defendant despite admission of improper expert testimony); State v. Soto, 340 N.J. Super. 47, 65 (App. Div.) (holding that erroneous admission of hearsay testimony that the defendant was involved in a robbery was harmless error in view of the other proofs establishing guilt), certif. denied, 170 N.J. 209 (2001).

Here, defendant did not dispute that he was driving the vehicle or that the guns and ammunition were found in the trunk. Defendant argued only that the State failed to prove beyond a reasonable doubt an essential element of the possessory offenses charged in the indictment: that he knowingly possessed the guns and ammunition in the trunk. N.J.S.A. 2C:2-1. We therefore measure the impact of the introduction of the email address on the State's burden of proving such knowledge to determine if the email address was clearly capable of producing an unjust result.

It is not a simple task to prove beyond a reasonable doubt that a person driving a car borrowed from another has knowledge of the contents of a bag in the car's locked trunk. Here, essential

to the State's proof that defendant had knowledge of the contents of the bag was the evidence that defendant was wearing a quick release rifle sling which accommodated one of the rifles found in the trunk. But the State's case was not without credibility issues concerning that evidence.

The credibility of the State's evidence was challenged by testimony showing defendant was permitted to rummage through the vehicle immediately following the stop, the police inventoried the rifle sling with items taken solely from the bag found in the trunk, and the police report about the stop did not mention defendant's purported statement that he always wore a rifle sling when he drove. Defendant argued the evidence showed that contrary to the officers' testimony, he was not wearing the rifle sling and that it was actually found in the bag in the trunk. He also argued that without the evidence he was wearing the sling and made the statement about wearing it, the State could not have proven beyond a reasonable doubt he knew about the guns and ammunition in the trunk.

Against this backdrop, we conclude that the admission of the email address was clearly capable of producing an unjust result. R. 2:10-2. The email address supported an inference that A.H. and defendant were gang members. The email address therefore permitted the jury to assume defendant "engaged in criminal activity,"

Goodman, supra, 415 N.J. Super. at 227, in its assessment of the credibility of the State's evidence. This was improper, raises a reasonable doubt as to whether it caused the jury to reach a verdict it may not have otherwise reached, and constitutes an error that we do not consider harmless. See R.B., supra, 183 N.J. at 330.

We affirm the court's order denying defendant's motion to suppress evidence, reverse defendant's convictions, and remand for further proceedings in accordance with this decision. We do not retain jurisdiction.