

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3876-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN C. RODRIGUEZ, a/k/a JOEL VEGA  
and JOEL VEGAS,

Defendant-Appellant.

---

Submitted March 6, 2018 – Decided March 22, 2018

Before Judges Fasciale and Summers.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Indictment No.  
13-07-2261.

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

Gurbir S. Grewal, Attorney General, attorney  
for respondent (Arielle E. Katz, Deputy  
Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant appeals from his conviction for second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1). We affirm.

On appeal, defendant argues:

POINT I

LAW ENFORCEMENT SEIZED RODRIGUEZ WITHOUT REASONABLE SUSPICION THAT A CRIME WAS AFOOT, AND THEREFORE, THE FRUITS OF THE SUBSEQUENT SEARCH MUST [BE] SUPPRESSED. U.S. Const. Amend. IV and XIV; N.J. Const. Art. I, Par. 7.

POINT II

THE COURT IMPROPERLY DENIED THE MOTION TO REOPEN THE SUPPRESSION MOTION U.S. Const. Amend. IV and XIV; N.J. Const. Art. I Par. 7.

POINT III

THE COURT ERRED IN DENYING RODRIGUEZ' MOTION FOR AN IN CAMERA INSPECTION OF THE OFFICER'S PERSONNEL FILE. U.S. Const. Amend. V, VI and XIV; N.J. Const. Art. I, Par. 10.

POINT IV

THE TRIAL COURT IMPROPERLY GAVE THE INSTRUCTION ON FAILURE TO TESTIFY WITHOUT THE DEFENDANT'S CONSENT, THEREBY DENYING HIM A FAIR TRIAL. (U.S. CONST. AMENDS. V, VI AND XIV; N.J.CONST. (1947), ART. I, PARS. 1, 9 AND 10) (NOT RAISED BELOW).

We have considered defendant's second argument and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). Instead, we focus on his remaining three contentions.

"Appellate courts reviewing a grant or denial of a motion to suppress must defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record." State v. Hubbard, 222 N.J. 249, 262 (2015). We should give deference to a trial judge's factual findings because these findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). However, the trial court's legal interpretations will be reviewed de novo. Hubbard, 222 N.J. at 263.

"Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004). To overcome this presumption, the State must show by a preponderance of evidence that the search falls within one of the well-recognized exceptions to the warrant requirement. State v. Maryland, 167 N.J. 471, 482 (2001) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973)). An investigatory stop, commonly referred to as a Terry<sup>1</sup> stop, is a valid exception "if it is based on 'specific and articulable facts which, taken together with rational inferences

---

<sup>1</sup> Terry v. Ohio, 392 U.S. 1 (1968).

from those facts,' give rise to a reasonable suspicion of criminal activity." State v. Rodriguez, 172 N.J. 117, 126-27 (2002) (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

When an investigatory stop is based on a confidential informant's tip, the State must establish the reliability of the tip under the totality of the circumstances. State v. Smith, 155 N.J. 83, 92-93 (1998) (citing Illinois v. Gates, 462 U.S. 213, 238 (1983)). The informant's veracity and basis of knowledge for the tip are two highly relevant factors. State v. Caldwell, 158 N.J. 452, 460 (1999) (citations omitted). Veracity may be established by the informant's past instances of reliability. State v. Keyes, 184 N.J. 541, 555 (2005). A sufficient basis of knowledge may be established "if the tip itself relates expressly or clearly how the informant knows of the criminal activity." Smith, 155 N.J. at 94. "Even in the absence of a disclosure that expressly indicates the source of the informant's knowledge, the nature and details revealed in the tip may imply that the informant's knowledge of the alleged criminal activity is derived from a trustworthy source." Ibid.

Of importance here, our Supreme Court has noted that an ordinary citizen reporting a crime to the police, which the citizen purports to have observed, is assumed to be reliable, and courts assume that a further demonstration of reliability is not necessary

to justify a stop of the person identified in the citizen's report. State v. Basil, 202 N.J. 570, 586 (2010). "There is an assumption grounded in common experience that such a person is motivated by factors that are consistent with law enforcement goals." State v. Davis, 104 N.J. 490, 506 (1986).

The judge found that the officer established reasonable and articulable suspicion to conduct a lawful investigatory stop and perform a protective frisk of defendant. A tip from a concerned citizen advised that the informant observed a Hispanic male, wearing a black jacket and tan boots, brandishing a small revolver at a specific intersection, which the police considered a high crime area. The officer reported to the area and corroborated that information within minutes of receiving the tip. The officer noticed defendant "blading" his body from the officer, which the officer concluded was in attempt to conceal a weapon. Looking at the totality of the circumstances, we have no reason to disturb the judge's findings or conclusions.

Next, we address defendant's argument that the judge erred by denying his request for an in camera inspection of an officer's personnel file. We review a judge's ruling on a defendant's discovery motion for abuse of discretion. State v. Enright, 416 N.J. Super 391, 404 (App. Div. 2010).

As part of a criminal defendant's constitutional right to confrontation, a defendant may attack a witness's credibility by "revealing possible biases, prejudices, or ulterior motives" as they relate to the issues in the case. State v. Harris, 316 N.J. Super. 384, 397 (App. Div. 1998). The question of "whether police personnel records should be disclosed involves a balancing between the public interest in maintaining the confidentiality of police personnel records" and a defendant's right of confrontation. Id. at 397-98. The State has a duty to learn of any evidence favorable to the defendant "known to others acting on the government's behalf in the case, including the police." State v. Jones, 308 N.J. Super. 15, 42-43 (App. Div. 1998) (quoting Kyles v. Whitley, 514 U.S. 419, 437 (1995)). However, that duty cannot be triggered by mere speculation that a government file may contain exculpatory material. Ibid. Such is the case here.

The officer was not the subject of an internal investigation involving defendant's arrest. His administrative leave was unconnected in any way to an internal investigation here. On this record, we see no credible basis to conduct the inspection. Thus, the judge did not err by concluding that there was an insufficient factual predicate.

Finally, as to defendant's election not to testify at trial, he argues for the first time that the judge erred by giving the

related jury charge without his consent. The judge told defendant during the charge conference that she was going to give the charge. Defense counsel and defendant did not object. We see no plain error here.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION