SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2809-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT DOMINGO,

Defendant-Appellant,

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Argued March 7, 2023 – Decided July 14, 2023

Before Judges Messano, Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 16-10-1692 and 16-10-1694.

Joshua P. Law, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Joshua P. Law, on the briefs).

Joie D. Piderit, Assistant Prosecutor, argued the cause for respondent (Yolanda Ciccone, Middlesex County Prosecutor, attorney; Joie D. Piderit, of counsel and on the brief).

PER CURIAM

A Middlesex County grand jury indicted defendants Robert Domingo and Dommenique Mignon for third-degree conspiracy, N.J.S.A. 2C:5-2(a)(1) and (2); third-degree burglary, N.J.S.A. 2C:18-2; third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a); third-degree receiving stolen property, N.J.S.A. 2C:20-7; two counts of fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); fourth-degree possession of a prohibited folding knife, N.J.S.A. 2C:39-3(e); third-degree possession of a weapon for unlawful purposes, N.J.S.A. 2C:39-4(d); and third-degree possession of hydrocodone, N.J.S.A. 2C:35-10(a)(1). Defendant was also charged in a separate indictment with fourth-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(a).

Defendant joined in Mignon's pre-trial motion to suppress evidence seized pursuant to the stop and subsequent search of Mignon's car. When police stopped the car, defendant was driving and Mignon was in the passenger's seat. The judge denied the motion, and both defendants went to trial. The jury found defendant guilty of conspiracy, burglary, the lesser-included offense of fourth-degree theft, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose, and acquitted him of the remaining charges.[1] The same

[1] The jury also convicted Mignon of various offenses. She is not a party to this appeal.

jury thereafter found defendant guilty of the certain persons offense in a bifurcated trial.

At sentencing, the judge imposed an extended term of imprisonment of seven years with a thirty-month period of parole ineligibility on the burglary conviction and concurrent terms on the remaining convictions under the first indictment. She imposed a consecutive eighteen-months' term of imprisonment on defendant for the certain persons conviction.

Defendant raises the following issues on appeal:

> POINT I
>
> THE "TIP" BY A KNOWN CRIMINAL TO THE EDISON POLICE WAS INHERENTLY UNRELIABLE BECAUSE OF ITS SOURCE AND LEGALLY INSUFFICIENT TO PROVIDE POLICE WITH REASONABLE SUSPICION TO BELIEVE DEFENDANTS HAD ENGAGED IN CRIMINAL ACTIVITY. ACCORDINGLY, THE INVESTIGATIVE STOP OF [MIGNON'S] CAR AND ITS SUBSEQUENT SEARCH WERE UNLAWFUL AND DEFENDANT DOMINGO'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED.[2]
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> POINT II
>
> WHEN IMPOSING CONSECUTIVE SENTENCES UPON DEFENDANT, THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO PROVIDE A FULL AND DETAILED ANALYSIS

[2] We have eliminated the subpoints in defendant's brief.

OF THE YARBOUGH[3] FACTORS; CONSEQUENTLY, THE SENTENCE MUST BE VACATED AND THE CASE REMANDED FOR RESENTENCING.

After consideration of the record and applicable legal standards, we reverse. As a result, we do not consider defendant's sentencing arguments.

I.

On the first hearing date, defense counsel advised the judge that she was stipulating to the facts contained in the State's motion brief and there was no need for a testimonial hearing. Although that brief is not part of the appellate record, it is apparent that the State asserted the motor vehicle stop was based on an anonymous tip to police. Defense counsel advised the judge and the prosecutor, however, that she was not stipulating to facts supplied in discovery provided after the State had filed its brief, in particular, that the identity of the "anonymous caller" was known to police. Although the prosecutor had a police officer available to testify, he ultimately agreed to proceed based on the facts outlined in the State's brief, dismissed the witness, and orally argued the motion should be denied.

[3] State v. Yarbough, 100 N.J. 627 (1985).

However, when defense counsel argued the tip was received from an anonymous caller and, pursuant to State v. Rodriguez, 172 N.J. 117 (2002), lacked sufficient corroboration to justify the motor vehicle stop, the prosecutor objected. He asserted that police knew the tipster was Netanel Weiss, who wished to remain anonymous. The prosecutor requested an adjournment to produce a witness to testify about the tip, which the judge granted.

When the proceedings reconvened for an evidentiary hearing seven months later, the State's sole witness was Detective Christopher Sorber of the Edison Township Police Department. On September 7, 2016, he was assigned to the Burglary and Narcotics Special Ops Division when a phone call was received by fellow officer, Detective Sergeant Steve Todd. Todd told Sorber the caller was Weiss, with whom Todd had "prior dealings" but who Todd said "wished to remain anonymous." Sorber knew of, but had no prior dealings with, Weiss and testified that Weiss was not one of Todd's confidential informants.

Todd told Sorber that Weiss said defendant and Mignon had just burglarized a home near Mignon's mother's house and were "in possession of burglary proceeds." Todd also told Sorber that Weiss said defendant and Mignon were in Mignon's "red Dodge Neon" and looking to fence the stolen goods. Sorber had had prior dealings with defendants "in that vehicle."

Sorber and his partner, Detective Kohut, left police headquarters in an unmarked police vehicle to locate the home that purportedly had been burglarized. While en route, the officers noticed Mignon's red Dodge Neon pass them in the opposite direction; defendant was driving. The officers made a U-turn and conducted a motor vehicle stop. Sorber testified that as he approached the vehicle, he noticed frantic movements inside the car as though its occupants were "attempting to conceal things," and he observed "a mess" inside the car, with "several cell phones [and] jewelry . . . all over the place."

What occurred thereafter is of little importance to the issues defendant raises on appeal. Mignon eventually consented in writing to a search of the red Dodge Neon, and police recovered items from the car that were later identified as having been stolen from the burglarized residence, as well as a knife from defendant's person.

During cross-examination, Sorber could not recall if Todd had told him how Weiss knew about the burglary or that defendant and Mignon were involved. Sorber knew Weiss "by name . . . [b]ecause he's been arrested in our department before[,]" but he was unaware of any other instances where Weiss had provided "a tip or information" to the police department or specifically to Todd. Sorber admitted having no prior "dealings" with Weiss. When asked if

he thought Weiss was reliable, Sorber answered in the affirmative and explained: "Because I've dealt with many people giving information that have been charged with crimes just as worse, if not worse than his," presumably a reference to Weiss, "and they've had reliable information." Sorber acknowledged that was just his opinion and not based on any interactions with Weiss.

Defendants had subpoenaed Weiss and Todd for the hearing, although Todd's subpoena was apparently not served in time. The hearing ended with the judge's request that the prosecutor advise her if he intended to call Todd as a witness. Weiss, who apparently was in custody and present in the courthouse, was not called as a witness.[4] For reasons unexplained by the record, no further testimony on defendant's motion was heard by the judge.

In a written opinion that accompanied her November 8, 2018 order denying defendants' motion to suppress, the judge found Sorber credible. She stated, "The key issue here is whether the tip from the known informant, . . . Weiss, was sufficient to justify an investigatory stop." (Emphasis added). The judge acknowledged:

[4] Earlier in the hearing, defense counsel indicated that they did not want Weiss to testify before Todd testified.

> [T]here was a lot of information that was not known [to Sorber] which would have a bearing on the issue at hand. For example, he did not know whether Weiss had provided reliable tips in the past; he was unable to answer specifically how Weiss knew about the burglary, or how Weiss knew these defendants; and he did not provide the specifics of the burglary location and proceeds, referring to them only as being in the vicinity of Mignon's mother's home . . . , and "stolen items," respectively. [Sorber] admitted that he did not know whether Weiss was reliable, but that he believed Weiss was reliable based upon his general training and experiences in matters involving informants with a criminal background. [Sorber] admitted that the only reason for the stop was the Weiss tip.

The judge distinguished the facts from those presented in State v. Rosario, 229 N.J. 263 (2017), and Rodriguez, because the "tip" in this case "was not anonymous." She observed that "a purely anonymous tip requires more than the tip itself[,]" but "[b]roadly speaking, the reliability of a known police informant is judged by any indicia of the informant's veracity and an analysis of the basis of the informant's knowledge." (Emphasis added). The judge said, "When the informant is from the 'criminal milieu,' then either independent police corroboration [of the tip] or a proven track record of reliability are required." (Emphasis added). The judge found "Weiss [wa]s a known informant from the 'criminal milieu,'" and although "Todd had prior dealings with Weiss, . . . Sorber was unaware of any prior tips by Weiss that had proven to be reliable." But

citing State v. Zutic, 155 N.J. 103 (1998), and finding "this list of methods for determining reliability [wa]s not exclusive," the judge said she must "examine the totality of the circumstances."

The judge found "there [wa]s no information as to why Weiss would be reliable based upon prior successful tips" and "no specified 'basis of knowledge' . . . as to how [Weiss] knew what he relayed to . . . Todd. If Weiss told Todd how he knew, Todd did not tell Sorber." However, the judge determined that Weiss had provided details "that would be hard to know, unless Weiss had personally observed what he described." She noted Weiss provided defendants' names, a specific car they would be driving, the general vicinity of the burglary, and that defendants were driving around looking to pawn proceeds of the burglary that were in the car. Given these details, together with Sorber's "general experience with criminal informants, [and] his direct experiences with these defendants from their prior criminal violations, . . . the totality of the circumstances [wa]s sufficient to establish reasonable suspicion." The judge concluded the stop of defendants' vehicle "was reasonable under the totality of the circumstances."

II.

"Our standard of review on a motion to suppress is deferential — 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. Nyema, 249 N.J. 509, 526 (2022) (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). Appellate courts defer "to those findings in recognition of the trial court's 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (quoting State v. Elders, 192 N.J. 224, 244 (2007)). "A trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Id. at 526–27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

A motor vehicle stop conducted by law enforcement officers implicates

> both the Fourth Amendment and Article I, Paragraph 7 [of the New Jersey Constitution, and] ordinarily, a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense to justify a stop.
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> [State v. Scriven, 226 N.J. 20, 33–34 (2016) (citing State v. Locurto, 157 N.J. 463, 470 (1999)).]

The judge concluded that Weiss' tip was the only reason Sorber had stopped defendants' car.

Undoubtedly, "[a]n informant's tip is a factor to be considered when evaluating whether an investigatory stop is justified." State v. Golotta, 178 N.J. 205, 213 (2003). The Court has explained that the nature of the tipster — whether anonymous, a confidential police informant, or a concerned citizen who provides their name — should initially guide a court's analysis of whether the tip, along with other circumstances, vaults the constitutional threshold by providing a reasonable and articulable suspicion that is constitutionally sufficient to stop the vehicle. Ibid.

In Rosario, an anonymous tipster identified the defendant by name and told police the defendant was selling drugs out of her home, identified with a specific address, and out of her "older burg[undy] Chevy Lumina." 229 N.J. at 267 (alteration in original). A police officer spotted the defendant sitting in the Lumina while parked in front of her home, and he pulled his car behind to block any movement. Id. at 268. What transpired thereafter is unimportant to our disposition of this appeal, except to say that the Court determined the defendant "was faced with an investigative detention" once the officer blocked her car. Id. at 275–76.

The Court then addressed whether "based on a totality of the circumstances, the encounter was 'justified at its inception' by a reasonable and

articulable suspicion of criminal activity." Id. at 276 (quoting State v. Dickey, 152 N.J. 468, 476 (1998)). The Court said that "an anonymous tip, standing alone, inherently lacks the reliability necessary to support reasonable suspicion because the informant's 'veracity . . . is by hypothesis largely unknown, and unknowable.'" Ibid. (quoting Rodriguez, 172 N.J. at 127–28). Moreover, as in this case, "[t]he fact that the tip accurately identified defendant and her vehicle is of no moment because a tipster's knowledge of such innocent identifying details alone 'does not show that the tipster has knowledge of concealed criminal activity.'" Ibid. (quoting Florida v. J.L., 529 U.S. 266, 272 (2000)). The Court "conclude[d] that reasonable and articulable suspicion was not present when this investigative detention began" and suppressed the evidence. Id. at 277.

"'[A] report by a concerned citizen' or a known person is not 'viewed with the same degree of suspicion that applies to a tip by a confidential informant' or an anonymous informant." State v. Amelio, 197 N.J. 207, 212 (2008) (quoting Wildoner v. Borough of Ramsey, 162 N.J. 375, 390 (2000)). As the Court has explained, "when the informer is an ordinary citizen[, t]here 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). "Consequently, 'an individual of this kind may be regarded as

trustworthy and information imparted by him to a policeman concerning a criminal event would not especially entail further exploration or verification of his personal credibility or reliability before appropriate police action is taken.'" Ibid. (quoting State v. Lakomy, 126 N.J. Super. 430, 435 (App. Div. 1974)).

When "a police informant provides the tip[,]" "verification is usually necessary" because "[t]he fact that the police informant has . . . engaged in criminal activity further undercuts [their] veracity." State v. Williams, 364 N.J. Super. 23, 34 (App. Div. 2003) (citing Davis, 104 N.J. at 506). In State v. Birkenmeier, the Court upheld the warrantless stop of the defendant's automobile based upon an informant's tip and the officers' subsequent corroboration of the tip through extensive surveillance. 185 N.J. 552, 561 (2006).

The motion judge distinguished Rosario by noting the tipster here, Weiss, was not anonymous but rather someone known to Todd and Sorber. Although Sorber testified that he had never received information from Weiss and did not know if Todd had used Weiss as a confidential informant, the judge did not find that the tip was provided simply by a known, "ordinary citizen[] . . . motivated by factors that are consistent with law enforcement goals." Davis, 104 N.J. at 506.

Instead, the judge described Weiss as a "known informant," "known police informant," and "known informant from the 'criminal milieu.'" And in assessing the totality of circumstances surrounding the tip, the judge cited Sorber's familiarity with "known criminal informants."

In Zutic, the Court considered whether the "totality of the circumstances" supported a finding of probable cause to conduct a warrantless search, an admittedly higher standard than the reasonable and articulable suspicion necessary to conduct a motor vehicle stop. 155 N.J. at 110 (citing Illinois v. Gates, 462 U.S. 213 (1983), and State v. Novembrino, 105 N.J. 95 (1987)); see also Rodriguez, 172 N.J. at 127 ("The '[r]easonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest.'" (alteration in original) (quoting State v. Stovall, 170 N.J. 346, 356 (2002))). The Court explained:

> An informant's "veracity" and "basis of knowledge" are two highly relevant factors under the totality of the circumstances. A deficiency in one of those factors "may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." An informant's veracity may be established in a variety of ways. For example, the informant's past reliability will contribute to the informant's veracity. With regard to the informant's basis of knowledge, if the informant does not identify the basis of knowledge, a reliable basis of knowledge may nonetheless be inferred from the level

> of detail and amount of hard-to-know information disclosed in the tip. Finally, independent corroboration of hard-to-know details in the informant's tip may also greatly bolster the tip's reliability.
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> [Zutic, 155 N.J. at 110–11 (first quoting State v. Smith, 155 N.J. 83, 92 (1998); then quoting Gates, 462 U.S. at 233; then citing Novembrino, 105 N.J. at 123; and then citing Smith, 155 N.J. at 95).]

Here, the judge specifically concluded that the veracity of Weiss's tip was unsupported by reliable information he had supplied to police in the past, nor did the tip itself provide the basis for Weiss's claimed knowledge of defendant's involvement in the burglary. The judge also found that the officers did not independently corroborate the tip, noting the tip itself was the basis for the stop.

Instead, the judge focused on details Weiss supplied in the tip which she found would have been difficult to know unless he had personal knowledge of defendant's involvement in criminal activity, specifically, defendants' names, the specific car they would be driving, the general vicinity of the burglary, and that defendants were driving around looking to pawn proceeds of the burglary that were in the car. These details, together with Sorber's general opinion that criminal informants like Weiss often supplied accurate information, led the judge to conclude that the motor vehicle stop was supported by a reasonable and

articulable suspicion that defendants had engaged or were engaging in criminal activities.

However, whether Sorber and Kohut had reasonable suspicion of defendant's involvement in criminal activity must be measured by what police knew when they stopped defendants' vehicle. See J.L., 529 U.S. at 271 ("The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search."). The only details from the tip that the officers confirmed through their observations before stopping the car were that defendants were driving together in Mignon's car. There was no evidence in the record that the stop was near the vicinity of the burglary or that defendants were "driving around" Edison, much less that they were in search of a pawn shop.

Those details are no more sufficient than those deemed insufficient by the Court in Rosario. See 229 N.J. at 276 ("The fact that the tip accurately identified [the] defendant and her vehicle is of no moment because a tipster's knowledge of such innocent identifying details alone 'does not show that the tipster has knowledge of concealed criminal activity.'" (quoting J.L., 529 U.S. at 272)); see also Rodriguez, 172 N.J. at 131 (finding the informant's accurate description of the defendant and his co-defendant and correct prediction of their location in

the bus terminal were "benign elements" that did not show "that the tip itself was 'reliable in its assertion of illegality'" (quoting J.L., 529 U.S. at 272)).

The judge also considered Sorber's "general experience with criminal informants, . . . [and] his direct experiences with these defendants from their prior criminal violations." The Court certainly has recognized that "[i]t is fundamental to a totality of the circumstances analysis of whether reasonable suspicion exists that courts may consider the experience and knowledge of law enforcement officers." Stovall, 170 N.J. at 363 (citing State v. Maryland, 167 N.J. 471, 487 (2001)). In Stovall, the detective had been a police officer for twenty-seven years, had had specialized training with the Drug Enforcement Agency in narcotics distribution, had made over 100 arrests, had acquired information from other agents during those investigations "dozens of times," had conducted similar searches at the airport every day, and before the stop had confirmed suspicious behavior by the defendants with respect to their airline reservations. Id. at 363–65.

Conversely, here, Sorber had been a detective for approximately one year before making this motor vehicle stop, and there was little testimony about his training or experience. Sorber's testimony regarding his knowledge of dealing

with criminal informants and experiences with information supplied by them was limited to his general opinion of their veracity which we quoted above.[5]

Based solely on Weiss's tip, the officers lacked a sufficient reasonable and articulable suspicion to stop defendants' car. The illegality of the stop voids the subsequent consent Mignon had supplied to the officers before they searched the car. Rodriguez, 172 N.J. at 132 (citing Wong Sun v. United States, 371 U.S. 471, 485 (1963)). All items seized from Mignon's car and defendant's person are suppressed.

Reversed. Defendant's judgment of conviction is vacated, and the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

[5] We also note that contrary to the judge's finding, there was no testimony by Sorber regarding his "direct experiences" with defendants "from their prior criminal violations." We assume the judge drew this inference from the testimony Sorber did give, which we have accurately quoted above.