SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1818-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD MAYANJA,

Defendant-Appellant.

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Submitted May 3, 2022 – Decided June 1, 2022

Before Judges Whipple and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Municipal Appeal No. 6248.

Beninato & Matrafajlo, LLC, attorneys for appellant (Dan T. Matrafajlo, of counsel and on the briefs).

William A. Daniel, Union County Prosecutor, attorney for respondent (Albert Cernadas, Jr., Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from a February 3, 2021 Law Division order that denied his motion to suppress evidence from a motor vehicle stop that led to his arrest and conditional plea to driving while intoxicated (DWI) under N.J.S.A. 39:4-50. We affirm.

On August 28, 2018, Hillside Police Department received a 911 call during which the caller stated that he "just saw a guy pull up to a liquor store and looks like he was already drinking." The dispatcher who received the call relayed, "Liberty Avenue – caller states that there is a male in a blue Lexus RX-330 looks to appear to be a little under the weather leaving Luis Liquors." Sergeant Daniel Wanat of the Hillside Police Department was the first officer to respond to the scene. He told the dispatcher, "I'm right here. Blue Lexus, 330? It looks like he's still in the lot. I'm just going to make contact with him before he can leave or attempt to leave." According to Wanat, "under the weather" is a euphemism at the Hillside Police Department for someone being intoxicated.

When Wanat arrived on the scene, he pulled into the parking lot and parked his vehicle to the rear and perpendicular to a blue Lexus RX-330, which was parked in a space. The parking lot was small, approximately forty feet, with five spaces on each side. Wanat parked his vehicle perpendicular

and behind the Lexus to prevent it from leaving. He did not have his overhead lights on. He exited his vehicle and approached the front passenger side of the Lexus. Defendant was sitting in the driver's seat with the key in the ignition and the car running.

Wanat knocked on the window and motioned to defendant to lower the window. When defendant lowered the window, Wanat immediately smelled the strong odor of alcohol emanating from inside the car. Wanat noticed defendant's eyes were watery and droopy and his gestures were slow. Wanat introduced himself and asked defendant for his driver's license, registration and insurance. Wanat noticed that defendant's speech was slurred. Soon thereafter, defendant failed the field sobriety tests and was placed under arrest for DWI, N.J.S.A. 39:4-50.

Defendant moved to suppress the evidence resulting from the motor vehicle stop. The municipal court judge denied the motion. Defendant entered a conditional plea of guilty to the DWI offense conditioned upon his right to appeal the municipal court's denial of his motion to suppress. Defendant appealed to the Superior Court who remanded the matter to the municipal court to further develop the record. The municipal court judge affirmed his original decision, and the matter returned as a municipal appeal to the Superior Court.

On January 25, 2021, the Superior Court held a hearing and heard testimony from Wanat. After finding Wanat's testimony credible, the court then noted that the test for a field inquiry is "whether, under all the circumstances, the person reasonably believed he could walk away without answering the officer's questions," which is an objective, not a subjective, test. Here, from a subjective perspective, defendant did not know that the police were going to interact with him as it took Wanat's knocking on the car window to get defendant's attention. Defendant was unaware his car was blocked. However, objectively, although the police vehicle was parked behind defendant's car, defendant "may not have been able to drive away, but he was essentially free to walk away" considering all the facts and circumstances at the time of the event. Additionally, the interaction happened very quickly "in a very, very short period of time," which the court found to diminish the extent of the intrusion. The court reasoned: "The police car pulls up. The officer gets out. He's knocking on the window. These are mere moments that pass in time."

The court explained that an investigative detention occurs when "an objectively reasonable person would feel that his or her right to move has been restricted" and "must be based on the officer's reasonable and particularized

suspicion that the individual was just engaged in or was just about to engage in a crime." The court found Wanat clearly had that suspicion based on the information he received from the dispatcher and his intent to stop defendant from leaving. "The officer understandably would not want somebody . . . who has been brought to their attention as potentially being intoxicated operating a vehicle [to operate the vehicle]. So he took steps to stop the vehicle from moving."

The court reasoned:

> the police here have a duty to investigate a call such as this. They wouldn't be doing anyone a service if they didn't approach the occupied vehicle or the suspected driver in some form or fashion. They certainly could have parked their car anywhere in the lot and walked up to [defendant] if he was on the sidewalk or outside of his car. The fact that he was in the car when they first arrived I don't think changes the nature of that approach.
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> It certainly can't be our law that when there's an anonymous tip of somebody who may be intoxicated in a vehicle and that vehicle is sitting in a parking lot, in a parking space, running or not, that the police must park their car in another spot and then walk up and attempt to gain some interaction at that point.
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> If that's our law, that places, I think, society as a whole in greater danger and the officers themselves in greater danger, especially where it's a momentary intrusion which could consist of the police officer knocking on the window and essentially as was here,

you know, hey we received a call. In this case, they rolled down the window and he was immediately struck by a strong alcoholic beverage smell which changed the dynamic at that point.

So looking at the facts as a whole, I do find that this matter was a field inquiry up until the point that the window was rolled down and the [officer] smelled the beverage, and then it became something else. It became an investigative detention.

Even if the initial momentary interaction was not a field inquiry and it was an investigative detention from start to finish because the police car pulled up behind [defendant], I do believe that the call from a citizen who reports somebody at a liquor store who looks like they've already been drinking and then provides the authorities with a description of the vehicle – this was make, model and color – that the [officer] then finds at the subject location. And this wasn't a lot full of blue Lexuses. This was the only one there. That gives the officer a reasonable and articulable suspicion to position his vehicle, to stop the movement of that vehicle. . . . [T]he vehicle is the potential danger. That gives them a reasonable an articulable suspicion sufficient enough to park the car as was done here and approach so that contact can be made with the individual. Because without that contact, the citizen's complaint cannot be investigated reasonably. . . .

I think reality and common sense have to guide this [c]ourt in looking at the facts of this case. And the reality and common sense that the [c]ourt is applying is that [defendant's] condition was such that it prompted a call from a citizen to the police. That's – usually, I don't think, going to be somebody who's [had] one beer. His condition was sufficient enough

> to prompt that public call and to have the police go out there. Again, not determinative but a factor that the [c]ourt considers in the totality of the circumstances . . . .

Based on its findings and conclusions, the court denied defendant's motion to suppress on the record then entered an order on February 3, 2021.

On appeal, defendant raises the following issues:

> POINT ONE:
>
> THE [TRIAL] COURT APPLIED THE INCORRECT STANDARD IN DENYING [DEFENDANT'S] MOTION AND RULING THAT THE INTERACTION WITH [DEFENDANT] WAS NOT A STOP.
>
> > A. THE HILLSIDE POLICE ACTION WAS A "STOP" AND THE STOP WAS NOT JUSTIFIED.
> >
> > B. THE [TRIAL] COURT APPLIED THE DISSENT IN [STATE V. ROSARIO, 229 N.J. 263 (2017)], IGNORING WELL-ESTABLISHED PRECEDENT.
> >
> > C. IF THE EVENT WAS A "[FIELD] INVESTIGATION," THEN N.J.S.A. 39:4-50 SHOULD NOT APPLY.
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> POINT TWO:
>
> THE POLICE INTERACTION WITH [DEFENDANT] WAS A "SEIZURE" AND JUSTIFICATION FOR SEIZING [DEFENDANT] WAS INSUFFICIENT AS A MATTER OF LAW.

Our scope of review of a Law Division's ruling on a municipal appeal is limited. We are bound to uphold the Law Division's "factual findings underlying the court's decision," State v. Elders, 192 N.J. 224, 243-44 (2007), on a motion to suppress if "there was substantial credible evidence to support the findings[,]" ibid. (quoting State v. Slockbower, 79 N.J. 1, 13 (1979)). In our de novo review, we do not make independent findings of fact, see State v. Locurto, 157 N.J. 463, 471 (1999), and we "defer to [the] . . . court's credibility findings that 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. Cerefice, 335 N.J. Super. 374, 383 (App. Div. 2000) (citing Locurto, 157 N.J. at 474). We "owe[] no deference to the trial court in deciding matters of law[,]" State v. Mann, 203 N.J. 328, 337 (2010), so we exercise plenary review of legal conclusions that flow from the established facts, State v. Handy, 206 N.J. 39, 45 (2011).

The Fourth Amendment to the United States Constitution and Article I, paragraph seven of the New Jersey Constitution protect citizens against "unreasonable searches and seizures." U.S. Const. amend IV; N.J. Const. art. I, ¶ 7. "Warrantless searches and seizures presumptively violate those protections, . . . but '[n]ot all police-citizen encounters constitute searches or

seizures for purposes of the warrant requirement . . . .'" State v. Rosario, 229 N.J. 263, 271 (2017) (citations omitted).

Considered less intrusive than an investigatory stop and an arrest, "[a] field inquiry is essentially a voluntary encounter between the police and a member of the public in which the police ask questions and do not compel an individual to answer." Ibid. "The test of a field inquiry is 'whether [a] defendant, under all of the attendant circumstances, reasonably believed he could walk away without answering any of [the officer's] questions.'" Id. at 271-72 (alterations in original) (quoting State v. Maryland, 167 N.J. 471, 483 (2001)). Moreover, "[b]ecause a field inquiry is voluntary and does not effect a seizure in constitutional terms, no particular suspicion of criminal activity is necessary on the part of an officer conducting such an inquiry." Id. at 272.

In contrast to a field inquiry, an investigatory stop is a "type of encounter . . . sometimes referred to as a 'Terry'[1] stop . . . ." State v. Privott, 203 N.J. 16, 25 (2010). The critical inquiry when determining that a field inquiry was converted into an investigatory stop, or a Terry stop, is whether a reasonable person under the same circumstances would have felt that the officer restrained his or her right to move by the officer's physical force or a

[1] Terry v. Ohio, 392 U.S. 1 (1968).

show of authority. State v. Tucker, 136 N.J. 158, 164-66 (1994). In Rosario, our Court held that a defendant sitting in a lawfully parked car was subjected to an investigatory stop when a marked patrol car blocked her car because she would not reasonably feel free to leave. 229 N.J. at 273. The Court reasoned, "such police activity reasonably would, and should, prompt a person to think that she must stay put and submit to whatever interaction with the police officer was about to come." Ibid. The Court rejected the State's argument that a reasonable person in the defendant's position would have felt free to leave her car and walk away from the police officer. Ibid.

"To determine whether the State has shown a valid investigative detention requires a consideration of the totality of the circumstances." Elders, 192 N.J. at 247. An investigatory stop of a motor vehicle is lawful if the authorities have a reasonable and articulable suspicion that violations of motor vehicle or other laws have been or are being committed. State v. Carty, 170 N.J. 632, 639-40, modified on other grounds, 174 N.J. 351 (2002). A police officer must act on "specific and articulable facts" and rational inferences from those facts. State v. Amelio, 197 N.J. 207, 212 (2008).

An officer need not make an actual observation of illegal conduct to develop his reasonable and articulable suspicion to stop an individual and

conduct a search; he may rely upon "adequate facts from a reliable informant" relayed by a dispatcher to establish a reasonable suspicion that an individual may have committed or is about to commit a crime. See State v. Crawley, 187 N.J. 440, 457 (2006). "On the other hand, if the information received by the dispatcher or headquarters fell short of the suspicion required by law for an investigatory stop, the fact that [an officer] relied in good faith on the dispatch would not make the stop a constitutional one." Id. at 457-58.

"To justify action based on an anonymous tip, the police in the typical case must verify that the tip is reliable by some independent corroborative effort." State v. Rodriguez, 172 N.J. 117, 127 (2002). In State v. Golotta, the Court "reduced the degree of corroboration necessary to uphold a stop" involving a 911 call reporting an erratic or intoxicated driver. 178 N.J. 205, 218 (2003). The Court explained:

> First, by its nature, a call placed and processed via the 9-1-1 system carries enhanced reliability not found in other contexts. Second, the conduct at issue is the temporary stop of a motor vehicle based on reasonable suspicion, not the more intrusive search of its contents or arrest of its driver, which would be governed by different rules. Third, an intoxicated or erratic driver poses a significant risk of death or injury to himself and to the public and, as such, that factor is substantial when evaluating the reasonableness of the stop itself.
>
> [Ibid.]

As to the reliability of a 911 call, the Court added,

> [t]he caller . . . must place the call close in time to his first-hand observations. When a caller bears witness to such an offense and quickly reports it by using the 9-1-1 system, those factors contribute to his reliability in a manner that relieves the police of the verification requirements normally associated with an anonymous tip.
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> [Id. at 222.]

Applying these principles to that case, the Court found the detailed information conveyed by a 911 caller reporting an erratic driver adequately gave rise to a reasonable, articulable suspicion for an investigative stop of the defendant's car. Id. at 224. The caller reported that the defendant's vehicle was "all over the road" and "out of control." Id. at 223. Additionally, "[t]he caller . . . described four separate facts, (1) the vehicle's color, (2) the type of vehicle, (3) the vehicle's license plate number, and (4) the vehicle's approximate location or direction, all of which matched facts relating to defendant's vehicle, except for a minor discrepancy in the plate number." Ibid. When the police officers observed the vehicle, they did not observe the defendant violating any motor vehicle laws. See id. at 209-10. After pulling the defendant over, they charged him with DWI. Ibid. Although the police officers did not observe defendant violating motor vehicle laws, "[t]he

information . . . convey[ed] an unmistakable sense that the caller ha[d] witnessed an ongoing offense that implicate[d] a risk of imminent death or serious injury to a particular person such as a vehicle's driver or to the public at large." Id. at 221-22.

Here, we defer to the trial court's factual finding that the officer parked his vehicle in a manner to prevent defendant from leaving. Although defendant, like the defendant in Rosario, could have left his car, a reasonable person whose vehicle was lawfully parked but blocked by a patrol car would not feel free to leave under the circumstances. Rosario, 229 N.J. at 273. Thus, defendant was subject to an investigatory stop, not a field inquiry.

However, from the outset, the police had a reasonable, articulable suspicion for conducting an investigatory stop of defendant. The 911 caller reported they "just saw a guy pull up to a liquor store and looks like he was already drinking" and that the man was leaving the location. The caller specifically described the vehicle's color, the type of vehicle, and the vehicle's approximate location. Although the caller did not provide the vehicle's license plate number, the caller gave a contemporaneous or near-contemporaneous description of what they saw: a man who "just" arrived at a liquor store, looked like "he was already drinking," and was about to leave. Like the

information from the 911 caller in Golotta, the information from the 911 caller here was specific, "close in time to [their] first-hand observations," and "convey[ed] an unmistakable sense that the caller . . . witnessed an ongoing offense that implicate[d] a risk of imminent death or serious injury to a particular person such as [the] vehicle's driver or to the public at large." 178 N.J. at 221-22. Moreover, the police officer immediately corroborated the caller's report as he was speaking with the dispatcher when he said, "I'm right here. Blue Lexus, 330? It looks like he's still in the lot. I'm just going to make contact with him before he can leave or attempt to leave." Thus, the detailed information from the 911 call, which "carries enhanced reliability," id. at 208; the police's temporary blocking of defendant's car; the significant risk of death or injury to himself and to the public that defendant posed by driving while intoxicated; and the police's contemporaneous corroboration of the 911 call, which reinforced the caller's reliability, adequately gave rise to a reasonable, articulable suspicion for conducting an investigatory stop of defendant.

Any unaddressed remaining arguments do not warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.