SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0349-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM GARCIA DE JESUS,

Defendant-Appellant.

Argued January 24, 2023 – Decided June 2, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 17-02-0224.

Carter E. Greenbaum, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alison Perrone, Assistant Deputy Public Defender, of counsel; Carter E. Greenbaum, Richard C. Tarlowe, and Alexander M. Butwin, Designated Counsel, admitted pursuant to Rule 1:21-3(c), on the briefs).

Ian C. Kennedy, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County

Prosecutor, attorney; Ian C. Kennedy, of counsel and on the brief).

PER CURIAM

Defendant William Garcia De Jesus appeals from his jury trial convictions for first-degree possession of a controlled dangerous substance (CDS) with intent to distribute and third-degree possession of heroin. After driving across the George Washington Bridge (GWB) into New Jersey, defendant was stopped by New York/New Jersey Port Authority (Port Authority) Police for a motor vehicle violation. Defendant consented to a search of the vehicle, during which officers found three kilos of heroin in a hidden compartment built into the dashboard.

Defendant contends the Law Division judge erred in denying his motion to suppress the fruits of the consent search. He further contends the trial judge erred in denying his motion for a new trial based upon a Brady[1] pretrial discovery violation by the prosecutor and by denying his motion for post-conviction discovery. Finally, defendant contends his reduced sentence[2] should

[1] Brady v. Maryland, 373 U.S. 83 (1963).

[2] The State and the Public Defender jointly moved to vacate defendant's seven-year parole ineligibility period imposed by the trial court in response to a directive from the New Jersey Attorney General's regarding mandatory parole

be vacated because the trial judge improperly considered matters not briefed by the parties and incorrectly weighed the sentencing factors. After carefully reviewing the record in light of the governing legal principles and arguments of the parties, we affirm the conviction and sentence.

I.

In February 2017, defendant was charged by indictment with first-degree possession of heroin with the intent to distribute, N.J.S.A. 2C:35-5(a)(1), and third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1). Defendant thereafter filed a motion to suppress the evidence seized during the motor vehicle stop, as well as a motion to reveal the source of information provided to the Fort Lee Police Department that was shared with Port Authority Police prior to the stop.

On September 11, 2017, the motion judge convened an evidentiary hearing on defendant's motion to suppress. The same day, the motion judge heard argument on defendant's discovery motion and denied it, rendering an oral decision on the record.

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ineligibility in non-violent drug cases. Directive Revising Statewide Guidelines Concerning the Waiver of Mandatory Minimum Sentences in Non-Violent Drug Cases Pursuant to N.J.S.A. 2C:35-12 (Apr. 19, 2021) (Directive 2021-4). That motion was granted in July 2022.

On November 8, 2017, the motion judge entered an order denying the motion to suppress, rendering a twelve-page written opinion. Defendant moved for reconsideration. On April 3, 2018, the motion judge denied the motion for reconsideration, rendering a fourteen-page written opinion.

A different judge presided over the jury trial, which was convened in September 2018. The jury returned a guilty verdict on both counts. On January 25, 2019, the trial judge merged the conviction on the third-degree count into the conviction on the first-degree count and sentenced defendant to a sixteen-year prison term with a seven-year period of parole ineligibility.

During the pendency of defendant's initial appeal, defense counsel obtained recordings of Port Authority Police radio transmissions through New York Freedom of Information Law (FOIL) requests. Those recordings had not been disclosed by the prosecutor as part of pretrial discovery. With the State's consent, defendant moved for a remand to the trial court to permit him to file a motion for new trial based on newly obtained evidence. We granted that motion and ordered a limited remand. We did not retain jurisdiction.

In July 2020, defendant filed the motion for a new trial. In October 2020, defendant filed a motion for post-conviction discovery and a testimonial hearing. On December 16, 2020, the trial judge heard oral argument on the

pending motions and determined a testimonial hearing was necessary. That hearing was convened on March 11, 2021, with oral argument heard on June 30, 2021. In September 2021, the trial judge denied defendant's motions for discovery and a new trial, rendering a twenty-nine-page written opinion.

This matter returns to us on defendant's second notice of appeal. He raises the following contentions for our consideration:

> POINT I
>
> THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S PRETRIAL MOTION TO SUPPRESS BECAUSE THE STATE FAILED TO ESTABLISH REASONABLE SUSPICION TO REQUEST CONSENT TO SEARCH.
>
> POINT II
>
> THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S MOTION FOR A NEW TRIAL BASED ON THE STATE'S SUPPRESSION OF EVIDENCE.
>
> A. The Radio Transmissions Were Favorable to the Defense.
>
> B. The Radio Transmissions Were Suppressed by the State.
>
> C. The Radio Transmissions Were Material to the Outcome of [Defendant]'s Suppression Motion and Trial.

1. The Radio Transmissions Were Material to [Defendant]'s Pretrial Suppression Motion Because They Would Have Undermined the Basis for the Stop and Subsequent Search.

2. The Radio Transmissions Were Material to [Defendant]'s Pretrial Suppression Motion Because They Would Have Bolstered [Defendant]'s Account of the Stop.

3. The Radio Transmissions Were Material to the Outcome of [Defendant]'s Trial.

POINT III

THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S PRETRIAL MOTION FOR DISCOVERY CONCERNING THE "TIP" ABOUT [DEFENDANT]'S CAR BEING UNREGISTERED.

POINT IV

THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S MOTION FOR DISCOVERY IN POST-TRIAL PROCEEDINGS.

POINT V

[DEFENDANT]'S SENTENCE SHOULD BE VACATED BECAUSE THE TRIAL COURT CONSIDERED MATTERS NOT BRIEFED BY THE PARTIES AND INCORRECTLY WEIGHED THE AGGRAVATING AND MITIGATING FACTORS[.]

A. The Trial Court Overlooked Critical Facts and Incorrectly Characterized [Defendant] as "Not Credible."

B. The Court Inappropriately Weighed the Aggravating and Mitigating Factors.

II.

We first address defendant's contention that his motion to suppress should have been granted because Port Authority police officers lacked reasonable suspicion to request his consent to search the vehicle as required by State v. Carty, 170 N.J. 632 (2002). We begin by recounting the relevant facts elicited at the suppression hearing and the motion judge's findings.

A.

The State presented testimony from Port Authority Police Officers Collin Journey and Patrick Devins.[3] No other witnesses testified at the hearing. Officer Journey testified that he was assigned to patrol the upper level of the GWB outbound from New York in an unmarked vehicle. Earlier that day, at around 3:00 p.m. or 4:00 p.m., Officer Journey received information from Detective Timothy Cullen of the Fort Lee Police Department to be on the lookout for a

[3] By the time of the postconviction proceedings, Officer Journey had been promoted to detective, and Officer Devins had been promoted to sergeant. We refer to both throughout using the "Officer" title to avoid confusion with respect to each's status and role at the time of the motor vehicle stop. We mean no disrespect in not referring to them using their present ranks and duty assignments.

2008 black Ford Fusion bearing a specified Pennsylvania license plate, which was suspected of having a fraudulent registration.

At approximately 9:00 p.m., Officer Journey observed the Ford Fusion enter the I-95 ramp after having crossed the lower level of the bridge from New York into New Jersey. Officer Journey began to follow the vehicle and observed it move out of its lane multiple times, crossing the broken line splitting lanes. He further observed defendant's vehicle cut off a car while changing lanes. Officer Journey followed the vehicle until it reached a safe area to stop and activated his overhead lights and siren. Officer Journey testified that he did not stop the vehicle based on the information provided by the Fort Lee Police Department; rather, he stopped the vehicle based on his personal observation of a motor vehicle violation, that is, "failure to maintain lane and careless driving."

Officer Devins arrived as backup. Officer Journey approached the passenger side of the vehicle and asked defendant for his license, registration, and insurance identification card. Defendant produced a New York driver's license from his wallet and a registration and insurance card from the glove compartment. The vehicle was registered to an address on East Thayer Street in Philadelphia.

Officer Journey's suspicions were raised when he recognized the vehicle was registered to the same address as a vehicle he stopped two days earlier that had a hidden compartment containing twelve ounces of heroin and a loaded firearm. Officer Journey also observed a single key in the ignition that was not attached to a key chain and noted there were no personal effects inside the vehicle. Based on his experience, the single key combined with the absence of personal affects was consistent with the modus operandi of drug traffickers.

Defendant stated the vehicle was owned by his friend "Jose," but was unable to give Jose's last name or address. Defendant also stated he was traveling from the Bronx to a friend's house in Philadelphia, but did not know where his friend lived.

Defendant exited the vehicle pursuant to Officer Journey's instructions. Defendant then stated that he was considering purchasing the vehicle and was following someone back to Philadelphia. However, he could not provide the name of the person he was following; nor could he provide a description of the vehicle he claimed to be following. Officer Journey testified that he did not observe defendant following any other vehicle.

At this point, the officers requested permission to conduct a consent search of the vehicle. Officer Devins provided defendant with a Spanish language consent to search form, which he signed.[4]

Officer Journey first searched the glove box, which was empty. He then observed that a metal box was built into the dashboard, indicating the existence of a concealed compartment in addition to the factory-built glove box. This compartment was located in the same place as the hidden compartment in the vehicle Officer Journey had stopped two days earlier that was also registered to the Philadelphia address.

Officer Journey was able to pull a section of the dashboard open and reach into the hidden compartment. He removed a package wrapped in duct tape that he believed contained CDS. Defendant was then placed under arrest. Officer Journey was eventually able to fully open the hidden compartment and recovered two more packages.

In his written opinion denying the motion to suppress, the motion judge found that both officers were credible. The judge explicitly accredited Officer Journey's testimony that he did not stop the vehicle based on the information

[4] On appeal, defendant does not challenge that he knowingly and voluntarily gave permission to search. Rather, defendant contends the officers had no lawful authority to ask for permission to search.

that had been provided by the Fort Lee Police Department but rather based on the observation that defendant abruptly changed lanes.

Regarding whether the officers had reasonable and articulable suspicion of criminal activity to ask for consent to search the vehicle, the motion judge concluded:

> In this case, [Officer] Journey conducted a lawful motor vehicle stop of the vehicle after observing defendant commit a traffic offense for failure to maintain lanes. After the vehicle was stopped, [Officer] Journey made several observations, including defendant's apparent nervousness; one single key in the ignition; no personal items visible in the vehicle; the inability of defendant to provide the last name of the owner of the vehicle; defendant's failure to provide the name of the person or the description of the vehicle he was following; and the familiarity of the officer with the address destination defendant provided to him by defendant.[5] Significantly, the vehicle from the same address stopped by [Officer] Journey only two days prior to this motor vehicle stop was found to contain a firearm and the occupants [were] arrested. While each one of these observations independently may not form the basis to establish an articulable suspicion of criminal activity, all of those observations, together with the [be on the lookout], provided justification to request consent to search the vehicle.

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[5] We note the hearing transcript shows defendant was unable to provide the officers with his destination address. However, the Philadelphia address that Officer Journey was already familiar with was the address on the vehicle registration card that defendant provided.

B.

The standard of review on a motion to suppress is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). "[A]n appellate court reviewing a motion to suppress 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. Ahmad, 246 N.J. 592, 609 (2021) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). We "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.'" Nyema, 249 N.J. at 526 (quoting Elders, 192 N.J. at 244). "An appellate court should not disturb the trial court's findings merely because 'it might have reached a different conclusion were it the trial tribunal' or because 'the trial court decided all evidence or inference conflicts in favor of one side' in a close case." State v. Nelson, 237 N.J. 540, 551 (quoting Elders, 192 N.J. at 244). "The governing principle, then, is that '[a] trial court's findings should be disturbed only if they are so clearly mistaken that the interests of justice demand intervention and correction.'" Id. at 551–52 (alteration in original) (quoting State v. Robinson, 200 N.J. 1, 15 (2009)). "A trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are

reviewed de novo." Nyema, 249 N.J. at 526–27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Turning to the substantive law governing the suppression motion, in Carty, our Supreme Court imposed a limitation on when police can prolong a motor vehicle stop by asking for consent to search. 170 N.J. at 647. The Court held,

> consent searches following a lawful stop of a motor vehicle should not be deemed valid . . . unless there is reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity. In other words, . . . unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop to continue the detention after completion of the valid traffic stop, any further detention to effectuate a consent search is unconstitutional.
>
> [Ibid.]

In State v. Shaw, the Court affirmed that "[t]his prophylactic rule protects the public from the unjustified extension of motor vehicle stops and from fishing expeditions unrelated to the reason for the initial stop." 237 N.J. 588, 619 (2019) (citing Carty, 170 N.J. at 647).

Reasonable suspicion is defined as "a particularized and objective basis for suspecting a person stopped of criminal activity." State v. Pineiro, 181 N.J. 13, 22 (2004) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). "There must

be 'some objective manifestation that the person [detained] is, or is about to be engaged in criminal activity.'" Ibid. (quoting United States v. Cortez, 449 U.S. 411, 417–18 (1981)). In State v. Goldsmith, our Supreme Court recently reaffirmed that "[a]lthough reasonable suspicion is a less demanding standard than probable cause, '[n]either "inarticulate hunches" nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights.'" 251 N.J. 384, 399 (2022) (quoting Stovall, 170 N.J. at 372).

When determining whether reasonable suspicion exists, a reviewing court must consider "the totality of the circumstances—the whole picture." Nelson, 237 N.J. at 554 (quoting Stovall, 170 N.J. at 361). "[T]he court must not engage in a 'divide-and-conquer' analysis by looking at each fact in isolation." Id. at 555 (quoting District of Columbia v. Wesby, 138 S. Ct. 577, 588 (2018)). The reasonable suspicion inquiry, moreover, must account for "the officers' background and training, and permits them 'to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.'" Ibid. (internal quotation marks omitted) (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)).

Considering the totality of the circumstances that developed during the encounter before the officers asked for permission to search, we conclude the officers had ample reasonable suspicion to believe the vehicle concealed evidence of criminal activity. Defendant's inconsistent and incredible statements, including his inability to provide the last name of the vehicle's owner or a description of the vehicle he claimed to be following, clearly suggest defendant was lying. See State v. Lund, 119 N.J. 35, 48 (1990) (recognizing "evasive action" and "lying to police" as factors that contribute to an officer's reasonable belief that a driver possesses contraband). Most significantly, Officer Journey established that the Ford Fusion was registered to the same Philadelphia address as another vehicle the officer had stopped two days earlier that contained concealed CDS and a loaded firearm. That circumstance alone, in our view, would justify prolonging the stop to investigate whether the vehicle defendant was driving was part of the same drug-trafficking enterprise.

III.

We next address defendant's contention that the trial court erred in denying his motion for discovery concerning the "tip" regarding the unregistered status of defendant's vehicle. At the conclusion of the suppression hearing, the judge denied defendant's application for discovery and testimony relating to the

information received from Fort Lee Police several hours before the stop. The judge reasoned the validity of the stop turned on the credibility of Officer Journey's testimony that he stopped the vehicle based on an observed motor vehicle violation and not based on the tip.

A trial court's ruling on a discovery issue "is entitled to substantial deference and will not be overturned absent an abuse of discretion." State v. Stein, 225 N.J. 582, 593 (2016). "Appellate courts 'generally defer to a trial court's resolution of a discovery matter, provided its determination is not so wide of the mark or is not based on a mistaken understanding of the applicable law.'" State v. Szemple, 247 N.J. 82, 94 (2021) (quoting State ex. rel A.B., 219 N.J. 542, 554 (2014)). An abuse of discretion typically arises when a trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

"As codified in Rule 3:13-3, New Jersey has a tradition of what is often described as an 'open file' model of reciprocal pretrial criminal discovery." State v. Ramirez, 252 N.J. 277, 295 (2022). "To advance the goal of providing fair and just criminal trials, we have adopted an open-file approach to pretrial

discovery in criminal matters post-indictment." Ibid. (quoting State v. Scoles, 214 N.J. 236, 252 (2013)). "Thus, criminal defendants are 'entitled to broad discovery' because it 'advances the quest for truth.'" Ibid. (quoting Scoles, 214 N.J. at 252). "Under Rule 3:13-3(a) and (b)(1), '[o]nce an indictment has issued, a defendant has a right to automatic and broad discovery of the evidence the State has gathered in support of its charges.'" Ibid. (internal quotation marks omitted) (quoting Scoles, 214 N.J. at 252).

"Nevertheless, despite a criminal defendant's general and automatic right to 'broad discovery,' . . . this Court also has long held that 'criminal discovery has its limits.'" Id. at 296 (quoting State v. D.R.H., 127 N.J. 249, 256 (1992)). "Defendants are not permitted to conduct a 'fishing expedition, or 'transform the discovery process into an unfocused, haphazard search for evidence.'" Ibid. (first quoting State v. R.W., 104 N.J. 14, 28 (1986); and then quoting D.R.H., 127 N.J. at 256). "Hence, information must be shown to be relevant to the issues in the case in order to be subject to disclosure." Ibid. (citing R. 3:13-3(b)(1)).

Clearly, the information provided by Fort Lee Police led Officer Journey to watch for and focus attention on the Ford Fusion defendant was driving. However, the act of surveilling and following a vehicle on a public road is not an intrusion upon Fourth Amendment liberty interests and does not require

officers to have reasonable suspicion that unlawful activity is occurring. See Michigan v. Chesternut, 486 U.S. 567, 576 (1988) (finding police did not stop a pedestrian merely by driving alongside him for a short distance and holding that police are "not required to have 'a particularized and objective basis for suspecting [the defendant] of criminal activity,' in order to pursue him"); State v. Hughes, 296 N.J. Super. 291, 296 (App. Div. 1997) (finding no seizure where a police officer in a patrol vehicle merely followed the defendant as he rode his bicycle and discarded a bag of drugs).

In this instance, the Fourth Amendment seizure occurred after Officer Journey observed a motor vehicle violation. We defer to the motion judge's factual finding accrediting the officer's testimony that the stop was based solely on the traffic violation and not on the "tip." See Nyema, 249 N.J. at 526–27 (reviewing courts defer to a trial court's factual findings in recognition of that court's "opportunity to hear and see the witnesses and to have the 'feel' of the case" (quoting Elders, 192 N.J. at 244)). Furthermore, that tip did not mention or suggest drug trafficking and thus did not contribute to the reasonable articulable suspicion that justified the consent search request.

We agree with the motion judge that background information pertaining to the tip was not relevant for purposes of the suppression hearing and would

not have changed the result of that hearing. Nor was it relevant at trial because it was specifically and expressly precluded as evidence. Prior to trial, the court and both counsels agreed that it would be unduly prejudicial to advise the jury that defendant's vehicle was the subject of a tip from another law enforcement agency prior to the stop. Accordingly, we do not believe the judge abused his discretion in denying defendant's discovery motion.

IV.

We next address defendant's contention the trial court erred in denying his post-conviction motion for a new trial based on newly obtained evidence and an alleged Brady violation by the State. After sentencing, defense counsel obtained recordings of Port Authority Police radio transmissions through New York FOIL requests. Defendant moved for a new trial based on the newly obtained evidence, arguing that the transmissions established a timeline of events that undermined the trial and suppression-motion testimony of Officers Journey and Devins. The trial judge, who also handled defendant's motion for a new trial and for post-conviction discovery, convened a post-conviction evidentiary hearing at which both officers testified to explain the inconsistencies. We deem it prudent to spell out in detail the facts elicited at the post-conviction hearing—paying close attention to the exact timing of rapidly unfolding events—mindful

that we are recounting and amplifying many of the same facts that we described in our discussion of defendant's motion to suppress.

Officer Journey testified at the post-conviction hearing that on October 14, 2016 he was assigned to the GWB working his "regular duties" to "watch the traffic." He testified that at 8:47:33 p.m. he transmitted "[ninety-five] [s]outh [e]xpress" on the radio to his supervisor and to Officer Devins, advising them that "the stop was underway at that point" and "his location." At 8:49:48 p.m., Officer Devins transmitted "I'm right behind you." At 8:57:03 p.m., Officer Journey radioed the communications desk, identifying himself. The communications desk acknowledged his transmission, and at 8:57:11 p.m., Officer Journey transmitted, "[ninety-five] [s]outhbound at the [eighty] split. Ah I'm going to be [eight]-[sixty] with security car . . . . Black Ford. One Occupant. We're okay." According to Officer Journey, "eight-sixty" means a traffic stop, "security car" referred to Officer Devins, and "one occupant" refers to defendant.

Between 8:49:48 p.m. and 8:57:11 p.m., Officer Journey questioned defendant, and then Officer Devins reviewed the consent to search form with defendant. Officer Journey testified he made the 8:57:11 p.m. transmission

when he was waiting at the front passenger side of defendant's vehicle while Officer Devins completed the consent to search form with defendant.

Immediately after the 8:57:11 p.m. transmission, Officer Devins signaled to Officer Journey that defendant signed the consent form, and Officer Journey began searching the vehicle starting with the front passenger area. Officer Journey located the concealed compartment, pulled out the first package, and placed defendant under arrest. When Officer Journey searched the vehicle, he knew the car was registered to the same address as a previous vehicle he stopped that contained a concealed compartment in the center console. Based on that circumstance, Officer Journey knew where to focus his search. As soon as he began the search, he saw a piece of metal that indicated a hidden compartment. He then looked at the front of the console and saw that it was not aligned. He proceeded to pop open the face of the radio, which took only a few seconds.

Officer Journey then shined his flashlight into the exposed area, saw what he believed to be CDS, and reached in to pull it out. He then placed defendant under arrest and radioed, "I'm with one under" at 8:58:34 p.m., and "[g]onna have one under" at 8:58:55 p.m. Based on the radio transmissions, Officer Journey testified his initial search took place between 8:57:11 p.m. and 8:58:34

p.m. Officer Journey searched the car more thoroughly after defendant was secured in Officer Devin's vehicle.

Officer Journey acknowledged that the time frame written on the consent to search form is 9:24 p.m. to 9:27 p.m., the motor vehicle tickets indicate the time of the offense was 9:18 p.m., his preliminary incident arrest report indicates an arrest time of 9:27 p.m., and "incident" time of 9:20 p.m., and the criminal complaint report says "time occurred" 9:20 p.m. to 9:27 p.m. He explained that he took those times from the consent to search form, which he now knows was incorrect. The other documents were not created until after Officer Journey returned to the station, secured the CDS, and processed defendant's arrest. Officer Journey testified that if he continued to follow the vehicle from 8:47 p.m. until 8:57 p.m., as defendant contends, the stop would have occurred a significant distance south of the location of the stop, closer to the area of the Vince Lombardi service area.

Officer Devins testified that when he heard Officer Journey put out over the radio "[ninety-five] [s]outh [e]xpress" at 8:47:33 p.m., he understood that to mean Officer Journey was requesting his assistance. Officer Devins testified that he "figured something was occurring. Normally you wouldn't just put a

location on the radio, if you weren't doing something, whether stopping a vehicle or something else going on."

After Officer Devins heard Officer Journey's 8:47:33 p.m. communication, he knew Officer Journey's location and "went [on] [ninety-five] [s]outh [e]xpress," knowing that he "would catch up to" Officer Journey. At 8:49:48 p.m., he transmitted over the radio "I'm right behind you" when he arrived on the scene. Officer Devins arrived approximately one minute after Officer Journey stopped defendant's vehicle. Officer Journey was already at the passenger side of the vehicle speaking with defendant when he arrived.

After he exited the vehicle, defendant and Officer Journey walked to the back passenger side of defendant's vehicle where Officer Devins was waiting. Officer Journey explained that defendant had given him consent to search the vehicle and wanted Officer Devins to fill out the consent form. Officer Devins retrieved a form and explained it to defendant. After defendant signed the consent form, Officer Devins "gave Officer Journey the thumbs up," "said okay," and "stood next to defendant while Officer Journey searched the vehicle." After searching the car for a couple of minutes, Officer Journey came out of the vehicle and placed defendant in handcuffs.

Defendant signed the consent to search form by 8:57 p.m. Officer Devins transported defendant to the precinct headquarters at 9:27 p.m., which was before the tow truck arrived. This was approximately thirty minutes after defendant had been placed under arrest.

Officer Devins testified that the time he entered on the consent to search form was incorrect. It would not have been possible to execute the consent to search form at 9:27 p.m. because he was driving his vehicle transporting defendant to the police station at that time. Specifically, he was transporting defendant from the location of the stop to the police station from 9:27 p.m. until 9:34 p.m.—approximately seven minutes. He explained it took approximately seven minutes because he needed to travel southbound on Interstate 95 to get to the next exit and then loop back on Interstate 95 northbound to get to the police building.

Following the testimonial hearing, defendant submitted a letter in which he argued that "newly-analyzed cell site location information for [defendant]'s cell phone . . . directly refutes the State's claim (and the [o]fficer[s'] testimony) that the traffic stop . . . occurred at 8:47 p.m." Defendant claims the location of defendant's 8:46 p.m. cell site is approximately seven miles from the location where Officer Journey pulled over defendant's vehicle.

In response to that letter, the State asserted defendant's interpretation of the cell phone extraction was mistaken because it was based on historical data stored on defendant's cell phone, not real-time information obtained from the service provider. To further refute defendant's contention, the State obtained license plate reader (LPR) data from the Alexander Hamilton Bridge and the GWB. That LPR data includes images of defendant's vehicle crossing the Alexander Hamilton Bridge into New Jersey at 8:42:16 p.m. and crossing the GWB southbound on the lower level at 8:45:05 p.m.

In a twenty-nine-page written opinion dated September 21, 2021, the trial judge denied defendant's motion for a new trial and for post-conviction discovery. The trial judge found both Officers Journey and Devins to be credible witnesses. Regarding Officer Journey:

> The court finds that Officer Journey presented as a credible witness. He provided straightforward answers to the questions and maintained good eye contact with counsel and the court during his testimony. He was not evasive and answered all questions directly and without hesitation. He did not embellish and provided good explanations for his testimony. He was alert, did not appear nervous and maintained a good demeanor. He also conceded his errors with respect to the times noted on his reports and the motor vehicle tickets and explained the reason for his mistakes. Finally, his testimony was consistent with his prior testimony at the [s]uppression [h]earing, the 104(c) hearing and the trial. In fact, the radio transmissions largely

> corroborate the timeline of events as described in his prior testimony which he gave without the benefit of the precise times memorialized in the radio transmissions. Overall, Officer Journey's testimony was credible. This is the fourth time a court has found Officer Journey to be a credible witness in this case.

Regarding Officer Devins:

> The court finds that Officer Devins was an extremely credible witness. He testified confidently and without hesitation. He did not appear to be nervous and maintained good eye contact with counsel and the court. He provided direct and straightforward answers. He did not attempt to avoid answering questions, including difficult questions regarding his mistake on the consent to search form. His testimony was internally consistent and was consistent with his prior testimony in the case.

The trial judge then considered the three elements required to establish a Brady violation as outlined in State v. Brown, 236 N.J. 497, 518 (2019): "(1) the evidence at issue must be favorable to the accused, either as exculpatory or impeachment evidence; (2) the State must have suppressed the evidence, either purposely or inadvertently; and (3) the evidence must be material to the defendant's case." The trial judge ruled that defendant failed to satisfy the first and third prongs. Specifically, the judge concluded:

> [T]he evidence offered in support of this motion is not material as required by the [third] element of the Brady test. There is no reason to conclude that the undisclosed evidence produced a verdict that is not worthy of

> confidence. If anything, the radio transmissions would have assisted the State at the [s]uppression [h]earing and at trial. There is not a reasonable probability that the earlier production of this evidence would have led to a different result at trial.
>
> Similarly, the evidence is not favorable to the accused and, therefore, fails to satisfy the first element of the Brady test. In fact, as discussed above, the evidence tends to strengthen the State's case and is, on balance, detrimental to the accused.

A.

We begin our analysis by acknowledging the governing legal principles. "A trial court's ruling on a motion for a new trial 'shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law.'" State v. Armour, 446 N.J. Super. 295, 305 (App. Div. 2016) (quoting R. 2:10-1). The motion "is addressed to the sound discretion of the trial judge, and the exercise of that discretion will not be interfered with on appeal unless a clear abuse has been shown." Id. at 306 (quoting State v. Russo, 333 N.J. Super. 119, 137 (App. Div. 2000)).

Rule 3:20-1 states, "[t]he trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice." "[P]ursuant to Rule 3:20-1, the trial judge shall not set aside a jury verdict unless 'it clearly and

convincingly appears that there was a manifest denial of justice under the law.'" Armour, 446 N.J. Super. at 305–06.

As outlined above, courts must consider "[t]hree essential elements" to determine whether a Brady violation occurred: (1) favorability of evidence to defendant; (2) State suppression of evidence; (3) materiality of evidence to defendant's case. Brown, 236 N.J. at 518. "The existence of those three elements evidences the deprivation of a defendant's constitutional right to a fair trial under the due process clause." Ibid.

Evidence is favorable to the accused if it has "some value" for impeachment purposes. Kyles v. Whitley, 514 U.S. 419, 450–52 (1995). To the extent that impeachment evidence may be "ambiguous," the United States Supreme Court has made clear that "impeachment evidence is 'favorable to the defense,' even if the jury might not afford it significant weight." Lambert v. Beard, 537 F. App'x 78, 86 (3d Cir. 2013).

The suppression of Brady evidence "violates due process . . . irrespective of the good faith or bad faith of the State." State v. Landano, 271 N.J. Super. 1, 32 (App. Div. 1994) (quoting Brady, 373 U.S. at 87). The prosecutor is charged with knowledge of evidence in his or her file. State v. Carter, 91 N.J. 86, 111–12 (1982). "[A] prosecutor's constitutional obligation to provide exculpatory

information 'extends to documents of which it is actually or constructively aware, including documents held by other law enforcement personnel who are part of the prosecution team,' because they are 'acting on the government's behalf in the case[.]'" State v. Washington, 453 N.J. Super. 164, 184 (App. Div. 2018) (first quoting State v. Robertson, 438 N.J. Super. 47, 69 (App. Div. 2014), then quoting Kyles, 514 U.S. at 437).

"The third Brady element requires that the suppressed evidence be material to defendants' case." Brown, 236 N.J. at 520. "[E]vidence is 'material' if there is a 'reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" State v. Martini, 160 N.J. 248, 269 (1999) (quoting United States v. Bagley, 473 U.S. 667, 682 (1985)). To evaluate materiality, the court must "'examine the circumstances under which the nondisclosure arose,' and '[t]he significance of a nondisclosure in the context of the entire record." Brown, 236 N.J. at 518–19 (alteration in original) (quoting State v. Marshall, 123 N.J. 1, 199–200 (1991)). "In determining the effect of the withheld evidence 'in the context of the entire record,' we consider the strength of the State's case, the timing of disclosure of the withheld evidence, the relevance of the suppressed evidence, and the

withheld evidence's admissibility." Id. at 519 (quoting Marshall, 123 N.J. at 200).

"Establishing materiality 'does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal.'" Id. at 520 (quoting Kyles, 514 U.S. at 434). "Instead, the inquiry is 'whether in the absence of the undisclosed evidence the defendant received a fair trial, understood as a trial resulting in a verdict worthy of confidence.'" Ibid. (internal quotation marks omitted) (quoting State v. Nelson, 155 N.J. 487, 500 (1998)). "The significance of the nondisclosure 'depends primarily on the importance of the [evidence] and the strength of the State's case against [a] defendant as a whole.'" Ibid. (alterations in original) (quoting Marshall, 123 N.J. at 200). "Said another way, evidence is material if there is a 'reasonable probability' that timely production of the withheld evidence would have led to a different result at trial." Ibid. (quoting Bagley, 473 U.S. at 682).

B.

We next apply the foregoing principles to the present circumstances, giving deference to the trial judge's factual findings. The trial judge correctly acknowledged that the second prong of the Brady test had been met, as the

recordings "were maintained on the Port Authority database until they were requested by the defense long after the trial of this matter."

The trial judge found that defendant did not establish the first element of the Brady test, reasoning that "the evidence tends to strengthen the State's case and is, on balance, detrimental to the accused." However, the trial judge did not account for the impeachment value of the timeline inconsistencies.

Evidence is favorable to the accused if it has even "some value" for impeachment purposes. Kyles, 514 U.S. at 419. Defendant contends that even if the officers' testimony regarding the timeline were accepted, "the recordings could still have been used, at an absolute minimum, to show that the officers failed to follow police procedure, wrote the wrong time (by more than [twenty] minutes) in a consent form filled out contemporaneously, and incorrectly described the arrest in a police report." We agree. To the extent the radio transmissions demonstrate that the police officers wrote incorrect times on the consent to search form and other police records, they could have been used to impeach the officer's credibility at both the suppression hearing and at trial. We therefore conclude that defendant established the first prong of the three-part test.

We turn next to the critical question of materiality. The trial judge conducted a comprehensive analysis, concluding the radio transmissions "essentially corroborate the testimony of Officers Journey and Devins" and "paint a more detailed picture of the events—one that bolsters the prior testimony of the [o]fficers and the State's case as a whole." The judge further found that

> [o]n the other hand, [d]efendant's claim that the stop did not happen until 8:57 [p.m.] is not supported by, and is contradicted by, the other evidence in the case. Many of [d]efendant's arguments are incorrect, in some cases because they were based on a misunderstanding of the radio transmissions and who was speaking. Other of [d]efendant's arguments simply do not withstand scrutiny and are not persuasive as discussed previously.

The trial judge was not persuaded by defendant's argument that the timeline was off when considering the cell phone data. He found that, based on the LPR data, if the stop had occurred at 8:57 p.m. as defendant claimed, the stop location would be inconsistent with where he was actually pulled over.

Nor was the judge persuaded by defendant's arguments that relied on the timestamps on the consent to search form and the police report. The judge provided a comprehensive explanation of his finding, noting:

> Defendant makes much of the fact that Officer Devins recorded on the consent to search form that the search was conducted from 9:24 [p.m.] to 9:27 [p.m.]

Defendant argues that this shows the consent form was signed [thirty] minutes after Officer Journey searched the car. Based on the officers' credible testimony, the radio transmissions and [d]efendant's own testimony at the pre-trial 104(c) hearing, it is clear that Officer Devins recorded the time incorrectly when he completed the form. Officer Journey testified that he saw [d]efendant reviewing the form with Officer Devins before Officer Devins signaled to him that the form was signed and Officer Journey performed his initial search of the vehicle. Likewise, Officer Devins testified that [d]efendant signed the form when they were standing behind the vehicles before Officer Journey searched the vehicle. Most significantly[,] [d]efendant himself testified [at the 104 hearing] that he signed the consent form after reviewing it in Spanish with Officer Devins on the side of the road before he was placed under arrest. There is no dispute that [d]efendant was placed under arrest by Officer Journey no later than 8:58:34 [p.m.] when he transmitted, "I'm with one under." By [d]efendant's own admission, he reviewed and signed the consent form before he was placed under arrest. Officer Devins's explanation of his mistake in completing the form is credible and consistent with [d]efendant's own testimony regarding the timeline.

Next, [d]efendant argues that the police report states that the incident occurred from 9:20 [p.m.] to 9:27 [p.m.], the preliminary incident report states that it occurred at 9:20 [p.m.] and the motor vehicle citations indicate 9:18 [p.m.]as the time of the offense. As Officer Journey conceded, these times are incorrect. Officer Journey['s] explanation of the reason for the errors is that he completed these documents several hours after the incident and he probably relied on the times on the consent to search form, which we now know are incorrect. Officer Journey's testimony on this

> issue is credible. Based on the radio transmissions, it is not possible for the offenses to have occurred at 9:18 [p.m.], nor is it possible for the entire incident to have occurred from 9:20 [p.m.] to 9:27 [p.m.]. We now know with specificity when all of these events happened based on the radio transmissions, the testimony of the witnesses including the [d]efendant and the LPR data. Defendant's attempt to turn these minor administrative errors into a basis for a Brady claim is without merit.

We see no abuse of discretion in the trial court's careful and thorough analysis. We add that the trial evidence of guilt was strong and was not significantly undermined by the timeline errors revealed by the radio transmissions. See Brown, 236 N.J. at 520 (noting the significance of the nondisclosure depends primarily on the importance of the evidence and the strength of the State's case against a defendant as a whole). We therefore concur with the trial judge that there was no "reasonable probability that timely production of the withheld evidence would have led to a different result at trial." Ibid.

V.

Defendant contends the trial court erred in denying his motion to compel additional discovery from the State in post-trial proceedings. Specifically, defendant sought (1) the prosecution's case file; (2) discovery of the tip; (3) additional audio transmissions from the day of the arrest; (4) notes of any

interviews conducted by the State with any witness in connection with the post-conviction proceedings; (5) drafts of certifications submitted by the witnesses; and (6) all documents related to the stop of the vehicle that Officer Journey stopped prior to defendant's arrest that was registered to the same address as defendant's vehicle.

"[P]ost-verdict discovery requests fall within the discretion of the trial court . . . ." Szemple, 247 N.J. at 97. "[A] trial court's inherent power to order discovery extends to post-conviction proceedings 'when justice so requires.'" Ibid. (quoting State v. Marshall, 148 N.J. 89, 269 (1997)). "But courts invoke that discretion 'only in the unusual case,' in recognition of the importance of finality." Ibid. (internal citations omitted) (quoting Marshall, 148 N.J. at 269–270).

"[T]here is no freestanding right to post-verdict discovery under our Court Rules, and so analysis of any motion for such discovery must therefore necessarily consider the proposed use to which the discovery would be put[.]" Id. at 103 (internal citations omitted). "[T]he State is not required post-conviction to allow defendants to '"fish" through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist.'" Id. at 107 (quoting Marshall, 148 N.J.

at 270). "If it is impossible for defendant to prevail on his ultimate claim for relief—even should the requested discovery prove favorable to his cause—then there is no need to separately analyze the discovery request . . . ." Id. at 104.

As we have already noted, we concur with the trial judge's conclusion that it was not possible for defendant to prevail in his motion for a new trial as he was unable to meet the materiality prong of the Brady test. Accordingly, we see no abuse of discretion in denying defendant's discovery motion. See id. at 111.

VI.

Finally, we address defendant's contention that his sentence should be vacated. The scope of our review is limited as we apply an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021). We do "not second-guess the sentencing court" and defer to the sentencing court's factual findings. State v. Case, 220 N.J. 49, 65 (2014). A sentence, therefore, must be affirmed "unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364–65 (1984)).

In imposing a sentence, the court must make individualized assessments based on the facts of each case and the aggravating and mitigating sentencing factors. See State v. Jaffe, 220 N.J. 114, 121−22 (2014). The judge must "state reasons for imposing such sentence including . . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting [the] sentence." R. 3:21-4(h); see also N.J.S.A. 2C:43-2(e) (requiring sentencing court to state on the record the reasons for imposing a sentence and the "factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence").

If the factors found by the trial court are so grounded, the sentence must be affirmed even if the reviewing court would have reached another result. State v. Lawless, 214 N.J. 594, 606 (2013); see also State v. O'Donnell, 117 N.J. 210, 215 (1989). A court "must qualitatively assess" the factors it finds and assign each an "appropriate weight." Case, 220 N.J. at 65. The sentencing judge must explain his or her findings about each factor presented by the parties and how the factors were balanced to arrive at the sentence. Ibid.

Defendant challenges his sentence on two grounds: (1) the trial court overlooked critical facts and incorrectly characterized him as "not credible"; and (2) the court inappropriately weighed the aggravating and mitigating factors.

The trial judge found aggravating factor three, N.J.S.A. 2C:44-1(a)(3) (the "risk that the defendant will commit another offense"), and accorded "very heavy weight" to aggravating factor nine, N.J.S.A. 2C:44-1(a)(9) (the "need for deterring the defendant and others from violating the law"). As for mitigating factors, the court found factor seven, N.J.S.A. 2C:44-1(b)(7) (defendant has "no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense"), and accorded "very little weight" to mitigating factor eleven, N.J.S.A. 2C:44-1(b)(11) (the "imprisonment of the defendant would entail excessive hardship to himself or his dependents"). The judge determined that the aggravating factors outweighed the mitigating factors and imposed a sixteen-year sentence, which is slightly greater than the fifteen-year midpoint of the first-degree range. See N.J.S.A. 2C:43-6(a)(1). The judge also imposed a seven-year period of parole ineligibility. As we have noted, the parole ineligibility term has since been vacated on the joint application of the State and defendant. See supra note 2.

Defendant challenges the judge's finding of aggravating factor three and rejection of mitigating factors eight and nine. We find no abuse of discretion in the trial judge's findings. In support of finding aggravating factor three, the judge considered photographs of defendant found on his cell phone showing him

holding "gigantic stacks of money" that he was displaying "as if he's holding some kind of trophy." The judge also commented on defendant's inconsistent statements, noting:

> The story in this case has morphed over time. It seemed to change again today when the defendant was giving his statement. This idea that he was in the process of buying this car, who he was buying it from, we've heard various versions of that. Today it was that he was taken advantage of by someone who he thought was a friend.
>
> Again, there's been no consistency in the story. The story has been incredible from day one. The story was not -- the jury was not persuaded by the idea that he was just, he was simply trying to buy a car and was a blind mule and had no idea the heroin was in the car. I didn't find that story credible. Obviously, the jury didn't find that story credible.

In support of aggravating factor nine, the trial judge noted that "[w]e're talking about 6.6 pounds of heroin . . . hundreds and hundreds of thousands of doses worth anywhere from half a million to [five] million [dollars]." The judge found a "need to deter this defendant from engaging in this type of conduct and the need to deter people generally from engaging in this type of conduct is extraordinarily high" and gave "very, very heavy weight to aggravating factor nine." We see no abuse of discretion in finding the relevant factors. Nor did the judge abuse his discretion in weighing them.

The judge declined to apply mitigating factors eight, N.J.S.A. 2C:44-1(b)(8) (the "defendant's conduct was the result of circumstances unlikely to recur"), and nine, N.J.S.A. 2C:44-1(b)(9) (the "character and attitude of the defendant indicate that he is unlikely to commit another offense"), reasoning that those factors were inconsistent with his findings regarding aggravating factor three. We see no abuse of discretion in that finding. To the contrary, we conclude that all the trial court's findings with respect to the existence and weight of the applicable aggravating and sentencing factors were "based upon competent credible evidence in the record." Bolvito, 217 N.J. at 228 (quoting Roth, 95 N.J. at 364–65).

At bottom, the sixteen-year sentence—which is one year longer than the midpoint of the first-degree sentencing range—does not "shock[] the judicial conscience," id. at 228 (quoting Roth, 95 N.J. at 364–65), especially considering that defendant has already benefited from the elimination of his previously imposed parole ineligibility term.

To the extent we have not specifically addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.