SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1558-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GREGORY VOZEH,

Defendant-Appellant.

———————————————

Argued April 19, 2023 – Decided July 7, 2023

Before Judges Currier, Mayer and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Municipal Appeal No. 21-14.

Kenneth Ralph argued the cause for appellant (Bruno & Ferraro, attorneys; Kenneth Ralph, of counsel and on the briefs).

William P. Miller, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County Prosecutor, attorney; William P. Miller, of counsel and on the brief).

PER CURIAM

Defendant Gregory Vozeh appeals from the January 10, 2022 Law Division order denying his motion to suppress evidence obtained from his motor vehicle stop, arrest, and Alcotest readings. We affirm.

I.

Around 10:55 p.m. on the evening of November 25, 2020, Stephen White was driving on Route 208 North when he saw a dark-colored SUV driving erratically. He called the Franklin Lakes Police Department to report his observations. As the SUV exited the highway and continued down local roads, White followed the vehicle and relayed its movements and location to the police dispatcher. He told the dispatcher the SUV was "all over the road."

White also notified the dispatcher when the SUV reached Arapaho Trail in Franklin Lakes, and the dispatcher relayed this location to Officer Gerard Gansel. Shortly thereafter, Gansel spotted an SUV in the same area, matching the dispatcher's description. He followed the vehicle for approximately one block, activated his overhead lights and effectuated a stop.

Gansel approached the SUV and asked the driver for his license, registration, and insurance documents. Because Gansel noticed defendant's eyes were a "little watery," "[h]e had slurry speech," and defendant admitted he consumed "one drink" of vodka about "two, three hours ago," Gansel asked

defendant to perform a series of Standardized Field Sobriety Tests (SFSTs). Based on defendant's poor performance on the SFSTs, Gansel arrested defendant and brought him to the police station.

At the police station, Gansel worked with Officer Christopher Heffner to complete the paperwork and observe defendant for a twenty-minute period, in anticipation of defendant submitting to an Alcotest. The results of the Alcotest revealed defendant's blood alcohol content (BAC) was 0.16, twice the legal limit set by N.J.S.A. 39:4-50(a). Accordingly, he was charged with driving while intoxicated (DWI).

II.

Defendant moved before the municipal court to suppress evidence from the stop, arrest, and Alcotest. In July 2021, the municipal court judge conducted a testimonial hearing on the suppression motions, during which the State produced three fact witnesses: White, Gansel, and Heffner. Defendant called an expert witness, Joseph Tafuni, to challenge the Alcotest readings.

At the commencement of the hearing, defendant's attorney objected to White taking the witness stand. Counsel argued that while White's testimony might be relevant at trial, it was irrelevant to the pending suppression motions because the judge needed to know "what knowledge [Officer Gansel] had at the

time he made the stop." The judge overruled the objection and allowed White to testify.

White stated that on the evening of November 25, 2020, while he was driving behind a dark-colored SUV along Route 208 North, he saw the vehicle "move from one lane across onto the left shoulder[,] . . . almost hitting the guardrail." White also testified the SUV ran up onto a grass embankment and it "appeared like [defendant] was almost going to turn the . . . vehicle over." Additionally, White stated that as he and the SUV traveled into Franklin Lakes, he called the police and "talked to the dispatcher" to tell "them what was happening." The municipal prosecutor asked White: "Did you describe to the dispatcher what you just observed?" White replied, "Yes," without further elaboration.

White also testified that as he continued following the SUV on "back roads" he never lost sight of it. Further, he stated that "contemporaneous with the events" he was observing, he was "describing . . . to dispatch[] the names of the streets" he and the SUV driver were on "every time [he] saw a street sign." White also noted that "on some of the streets," the SUV "was driving on the left side of the road." White recounted that as he was on the phone with the dispatcher, he saw the police pull over the SUV so he "stopped and . . . waited

for one of the officers to come to talk to [him]" before leaving the scene.[1]

Officer Gansel subsequently testified that on the night of the incident, he received a report from a dispatcher about an "erratic driver" in "a dark-colored SUV" that was "all over the road" and "traveling . . . northbound" on Route 208. As Gansel "headed in that direction," the dispatcher informed him the suspect's vehicle had traveled to "the area of Arapaho Trail." Gansel "proceeded to the area" and saw an SUV matching the dispatcher's description. According to Gansel, after he activated his lights to stop the SUV, he saw the SUV driver "kind of jerk[] the car to the left" and bring "it back to the right," "hit up against the curb" and "c[o]me to a rest."

Gansel approached the driver and asked for his license, registration, and insurance. The driver — then identified as defendant — handed the officer his license but had "a little trouble" finding his registration and insurance before producing these documents. Gansel testified defendant's eyes were "a little" watery, his hand movements were "[a] little shaky," and "[h]e had slurry speech." Gansel asked defendant if he had been drinking and defendant admitted to consuming "one drink" of vodka.

---

[1] A portion of White's conversation with the unnamed officer, and a portion of defendant's conversation with Officer Gansel was captured on dashcam video and played during the suppression hearing.

Gansel directed defendant to exit the SUV and perform various SFSTs. According to the officer, defendant "kind of stumbled a little bit" while getting out of the SUV and "needed his car for support once he exited it." Gansel also testified he detected the odor of alcohol once defendant was out of the SUV.

The first test Gansel conducted was the Horizontal Gaze Nystagmus test. He admittedly "rushed it," so the results of that test were invalid. The officer then asked defendant to perform the "walk and turn" test. Gansel testified defendant made several errors on this test. For example, defendant was "unable to maintain the [designated] starting position," failed to touch heel-to-toe on certain steps, "fell off" the imaginary straight line he was instructed to walk, and took ten steps instead of the directed nine. During the final test, the "one leg stand," defendant "put his foot down" three times, at which point, Gansel placed him under arrest. Gansel testified he arrested defendant based on "the totality of circumstances," including: the "caller" (White) who "describ[ed] the erratic driver"; defendant's "admitted . . . drinking"; defendant's "hand movements"; his "watery eyes, little bit of slurred speech, and the [results of the] SFSTs."

After hearing argument from counsel, the municipal court judge found the stop was lawful and there was probable cause for defendant's arrest. Based on the State's proofs, the judge concluded that on the night of the incident: White

was driving behind defendant's SUV when he contacted the dispatcher; defendant admitted he was drinking prior to the stop; and defendant had "some problems," but "most of the problems [were] when he exited the vehicle." Further, the judge found the "police may have been equivocal as to their initial thoughts as to the level of [defendant's] intoxication, but once the SFSTs were done . . . and . . . Officer [Gansel] got closer to the defendant and . . . smelled an odor of an alcoholic beverage[,] . . . there[] [was] probable cause . . . to arrest." Thus, he denied the suppression motions as to the stop and arrest.

Before addressing defendant's challenge to the admissibility of the Alcotest results, counsel advised the judge that defendant stipulated to the admission of the State's foundational documents, which included Gansel's certification card for conducting the Alcotest. Defense counsel also stipulated defendant's expert was "just [going to] challenge the [twenty-]minute observation period" preceding the Alcotest.

Gansel resumed the witness stand to testify about how he conducted the Alcotest. Heffner also testified about the Alcotest, essentially corroborating Gansel's statements. According to the officers' testimony, after they arrested defendant, they returned to the police station around 11:14 p.m. While Gansel removed his gear, Heffner remained with defendant. At 11:25 p.m., Heffner

commenced observing defendant for the requisite twenty-minute observation period. A few minutes later, Gansel took over for Heffner and continued observing defendant so Heffner could remove his own gear. During this time, Gansel administered defendant's Miranda[2] rights, and read him the Attorney General's Standard N.J.S.A. 39:4-50.2(e) form.[3]

While Gansel was observing defendant, Heffner turned on the Alcotest machine and "began inputting . . . [defendant's] information into the . . . Alcotest," and specifically "the arrest time," which he obtained "from Officer Gansel." The officers then "wait[ed] for the ambient air check" and for "the machine to be ready for . . . defendant." Gansel testified that once the machine was ready, "Officer Heffner came back into the [detention] room" and Gansel "went back out to the Alcotest [room] and . . . placed the . . . mouthpiece on the hose." Heffner continued observing defendant in the detention room.

Once Gansel confirmed he was ready to conduct the first breath test, Heffner escorted defendant to the testing room. Gansel performed the first test

---

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

[3] The police use this form to notify a person arrested on suspicion of DWI that they are required to provide breath samples for testing to determine alcohol content. The form also includes a space to record the suspect's response after the suspect is asked to affirmatively state whether they will submit to breath testing.

at 11:49 p.m., following which Heffner brought defendant back to the detention room. After Gansel placed a fresh hose on the Alcotest machine, Heffner returned defendant to the testing room. Gansel administered the second breath test at 11:52 p.m.

During Gansel's cross-examination, he admitted he made some clerical errors in filling out the standard Drunk Driving Observation form after administering the Alcotest. He acknowledged he did not record the time the machine was turned on or when the twenty-minute observation period ended, but instead, used the form to record the times he administered the two breath tests. Gansel further stated he signed the form certifying he was the person who "continued to observe the suspect . . . until the actual Alcotest examination," but admitted he "did it in conjunction with Heffner," as Heffner also watched defendant during the twenty-minute observation period. But Gansel testified he watched defendant alone for "most of" that period, adding, "[p]robably about [fifteen minutes]" in total.

Heffner testified that prior to each breath test, he escorted defendant to the testing room and remained by defendant's side, except when defendant walked through the testing room door. Heffner also stated that when defendant went through the testing room door, he lost eye contact with defendant for

"[m]aybe a couple of seconds." But Heffner testified he could still hear defendant and see his profile as defendant went through the testing room door because Heffner stayed "beside him" "as best as [he] could."

On cross-examination, defense counsel asked Heffner if he was "a breathalyzer operator." Heffner answered, "I am, yes." Defense counsel also inquired, "You're certified?" Heffner replied, "Correct." When asked if Heffner had his certification card with him, Heffner answered, "On me, no." In response to further questioning, Heffner told defense counsel he was certified two to three years prior and had attended a refresher course.

Tafuni testified on defendant's behalf after Heffner's testimony concluded. The municipal prosecutor stipulated to his qualifications as an expert but asked defense counsel to confirm the parties were proceeding on "a . . . very limited issue . . . of [twenty] minutes, correct?" Defense counsel responded, "Correct." In explaining when he believed the observation period began, Tafuni opined it would not have started until 11:34 p.m., after Gansel read defendant his Miranda rights. Tafuni also opined Heffner's loss of face-to-face contact with defendant when Heffner escorted him through the testing room door compromised the integrity of the twenty-minute observation period.

Without prompting from defense counsel, Tafuni also stated that until

Heffner testified that day, Tafuni was unaware the officer was involved in the Alcotest procedure. Tafuni testified:

> [t]hings kind of change[d] today . . . . This is the first I heard about . . . Heffner's involvement in this case. . . . As far as turning on the Alcotest . . . and entering data. . . . I never received [his] Alcotest card . . . . There's no mention . . . in any report . . . he was the one that started the . . . breath test.
>
> I've got to tell you . . . I've been doing this a long time . . . . This is . . . the first time I've heard of . . . two [o]fficers . . . tag teaming a breath test. And I . . . was kind of at a loss here . . . because I . . . never really heard of it.

Further, Tafuni testified that because the observation form only listed Gansel as the person who performed the twenty-minute observation, he believed only one person operated the Alcotest and his analysis was based on this assumption. Tafuni concluded "the breath test results . . . [were] compromised because of these issues."

On cross-examination, Tafuni conceded he knew Heffner "was involved in the [twenty-]minute observation" and "the sole issue [the parties were] trying . . . [was] on the [twenty-]minute observation." Further, Tafuni admitted that whether "Officer Heffner [was] certified or not [was] irrelevant" "for the [twenty-]minute issue."

On re-direct examination, Tafuni stated it was not until the suppression hearing he "found out . . . [Officers Gansel and Heffner] were dual operators of th[e] breath testing procedure." The State objected to this testimony, reminding the judge of the parties' stipulation that the "sole issue here is [the twenty] minutes" of observation. Defense counsel responded, "even though the sole reason for this hearing is the [twenty-]minute issue, I . . . don't think we need to put blinders on that . . . we [just] found out that two people were operating the breathalyzer." Defense counsel described the revelation as "a discovery failure."

Before addressing the discovery issue further, the judge allowed the State to produce Gansel as a rebuttal witness and permitted defense counsel to further cross-examine the officer. During his testimony, Gansel acknowledged Heffner was not listed in the foundational documents as an operator of the Alcotest. However, Gansel also testified he "administered the test" and was "the only Alcotest operator."

Following further argument from counsel, the municipal court judge denied defendant's motion to suppress the Alcotest results. The judge credited the testimony of Officers Gansel and Heffner and concluded they continually observed defendant for a period of twenty-four minutes.

Regarding the administration of the Alcotest, the judge stated,

> I do not find a tag team . . . as to the . . . operation of the Alcotest. . . . Officer Heffner pressed the on/off switch. He put[] the pedigree information in, walked away. He did not operate the machine during the first o[r] second test. He did not change the mouthpiece. He did not . . . do the various tests that are involved in preparing the machine for the first and second tests. He did not operate it.
>
> I do not find the fact that [Heffner] did not provide . . . proof of his being a certifi[]ed . . . Alcotest operator to be deficient.
>
> And, . . . I d[o] not find, as a . . . matter of law, that he operated it.
>
> . . . .
>
> The test was . . . done by Officer Gansel. I'm going to admit the AIR,[4] [as 0].16.

Thereafter, defendant entered a conditional guilty plea to the DWI charge, preserving his right to appeal the denial of his suppression motions. In exchange for his plea, the State recommended he receive the mandatory minimum sentence. The judge accepted the State's recommendation, assessed the appropriate fines and penalties, imposed a four-month driver's license suspension, and then stayed the license suspension pending appeal.

[4] "AIR" is an acronym for Alcohol Influence Report, the report that reflects the results of the Alcotest.

Approximately two months later, a Law Division judge granted defendant's motion to stay the entirety of his sentence.

On appeal to the Law Division, defendant argued: White should not have been permitted to testify at the motion hearing; the stop was invalid; the police had no probable cause to arrest him; and the Alcotest readings should have been excluded. On January 10, 2022, following a de novo trial, the Law Division judge rejected these arguments and entered an order, denying defendant's motions to suppress and finding defendant guilty of DWI.

In a comprehensive written opinion accompanying the January 10 order, the Law Division judge found "Officer Gansel had a reasonable and articulable suspicion that [d]efendant committed a motor vehicle offense[,] based on the information provided to him by dispatch that [d]efendant's vehicle was observed to be 'all over the road.'" The judge also concluded "Gansel was told by dispatch that the [SUV] exited Route 208 . . . and was around Arapaho Trail, where[,] upon his arrival, the officer saw a dark[-]colored SUV matching the description he received." He further found Gansel credibly testified he saw defendant's SUV "kind of [jerk to the] left" after Gansel activated his lights to stop the car.

In finding the stop lawful, the judge explained, "[t]he standard is not, as [d]efendant suggests, that Officer Gansel needed to know the specific details

of . . . White's observations via the dispatcher, or observe the motor vehicle offenses himself . . . to lawfully conduct the stop." The judge also found Gansel did not need to "'cross-examine' the dispatcher as to the veracity of the tip" and that Gansel properly "relied on the information provided by dispatch in conducting a stop of a vehicle that matched the [dispatcher's] description."

Additionally, the judge determined that White: contemporaneously reported his observations of the SUV to a police dispatcher; was not "an 'anonymous' tipper"; and had "no evident motive for reporting an erratic driver." And because the judge found White was a "citizen informer" who was "undoubtedly a reliable informant," he concluded the dispatcher was authorized to "delegate the actual stop" to Gansel. Thus, the judge rejected defendant's argument that White's testimony was irrelevant or "unfairly prejudicial."

Next, the judge concluded there was probable cause to support defendant's arrest, and reasonable grounds to require defendant to submit to the breath test. The judge found: "(1) [d]efendant admitted to consuming at least one vodka drink earlier that evening; (2) Officer [G]ansel detected an odor of alcohol emanating from [d]efendant; (3) [d]efendant had bloodshot and watery eyes; (4) [d]efendant had slightly slurred speech; and (5) [d]efendant performed poorly on all three of the SFSTs." These facts, the judge determined, "would lead" "an

objectively reasonable police officer" "to the well-grounded suspicion that [d]efendant was under the influence while operating his motor vehicle. Therefore, the officers had probable cause to arrest [d]efendant for DWI." The judge also found "the officers were justified in administering the breath test" based on these same facts.

Regarding the Alcotest, the Law Division judge concluded the record showed "[d]efendant was continuously observed for approximately twenty-four minutes," noting "the observation period began at 11:25 p.m.," and Gansel "gave [defendant] Miranda [w]arnings at 11:32 p.m." The judge also credited Gansel's testimony that he "remained with [d]efendant" "[w]hile Officer Heffner turned on the machine." Therefore, he concluded, "[t]here is no twenty-minute observation violation here."

Next, the judge found "no violation of Chun,[5] the discovery rules, or otherwise," notwithstanding defendant's objection to Heffner's involvement in preparing the Alcotest machine for testing. The judge concluded "the machine was in proper working order, the machine was operated by Officer Gansel[,] who is a certified operator, and the machine was used in accordance with the Chun procedures." Additionally, he found Heffner's "interactions" with the

[5] State v. Chun, 194 N.J. 54 (2008).

machine were so "benign, negligible, and inconsequential that he [could] not be held to the same standard as Officer Gansel[,] who actually conducted the tests." The judge added, "Heffner's trivial actions reasonably could not have compromised the results of the test in any way" and "[s]ince Officer Heffner cannot be considered an operator," "his credentials were not required to be disclosed." Thus, the judge deemed the Alcotest results admissible and affirmed defendant's municipal court conviction. On January 13, 2022, over the State's objection, the judge granted defendant a further stay of his sentence pending this appeal.

III.

On appeal, defendant renews the arguments he advanced before the municipal court and Law Division judges, and contends the Law Division judge erred in denying his suppression motions. Regarding the motor vehicle stop, defendant argues that because White's testimony was "unfairly prejudicial" and "irrelevant" to the motion, it should have been excluded. He also contends there was "no sufficient legal basis for the stop."

Additionally, defendant argues the judge erred in finding there was probable cause for his arrest and "a sufficient basis to require him to submit to a breath test." Finally, defendant contends the judge mistakenly found the State

"establish[ed] the foundational requirement of a continuous twenty-minute period of observation prior to the Alcotest" and satisfied "the legal requirements to enter the breath test result into evidence." These arguments are unavailing.

Appellate review of a de novo proceeding in the Law Division following an appeal from the municipal court is "exceedingly narrow." State v. Locurto, 157 N.J. 463, 470 (1999). In general, "appellate review of a municipal appeal to the Law Division is limited to 'the action of the Law Division and not that of the municipal court.'" State v. Palma, 219 N.J. 584, 591-92 (2014) (quoting State v. Joas, 34 N.J. 179, 184 (1961)). Thus, we "focus[] on whether there is 'sufficient credible evidence . . . in the record' to support the [Law Division judge's] findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Ibid. (quoting Locurto, 157 N.J. at 474).

Similarly, the scope of review of a decision on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021). Typically, we "will not disturb the trial court's factual findings unless they are so clearly mistaken that the interests of justice demand intervention and correction." State v. Goldsmith,

251 N.J. 384, 398 (2022) (internal quotation marks omitted) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). Likewise, we defer to a trial court's evidentiary rulings absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021) (citation omitted). Under that deferential standard, we "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)). However, we consider the trial court's legal rulings de novo. Robertson, 228 N.J. at 148. Guided by these standards, we address defendant's contentions, starting with his challenge to the motor vehicle stop.

The United States and New Jersey Constitutions guarantee the right of the people to be protected from unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7. "A motor-vehicle stop by the police, however brief or limited, constitutes a 'seizure' of 'persons' within the meaning of" both constitutional provisions. State v. Scriven, 226 N.J. 20, 33 (2016) (quoting State v. Dickey, 152 N.J. 468, 475 (1998)). Thus, "a police officer must have a reasonable and articulable suspicion that the driver of a vehicle . . . is committing a motor-vehicle violation or a criminal or disorderly persons offense to justify a stop." Id. at 33-34 (citing Locurto, 157 N.J. at 470).

Reasonable suspicion requires that "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant . . . intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968). "The test [for reasonable suspicion] is 'highly fact sensitive and, therefore, not readily, or even usefully, reduced to a neat set of legal rules.'" State v. Golotta, 178 N.J. 205, 213 (2003) (quoting State v. Nishina, 175 N.J. 502, 511 (2003)).

"An informant's tip is a factor to be considered when evaluating whether an investigatory stop is justified." Ibid. Generally, "[a]n anonymous tip, standing alone, is rarely sufficient to establish a reasonable articulable suspicion of criminal activity" and requires "independent corroborative effort" from the police. Ibid. (quoting State v. Rodriguez, 172 N.J. 117, 127-28 (2002)). That standard is relaxed, however, for "citizen informants" reporting suspected crimes. State v. Basil, 202 N.J. 570, 586 (2010).

Unlike anonymous tipsters, "police may assume that an 'ordinary citizen' reporting a crime does not have suspect motives." State v. Hathaway, 222 N.J. 453, 471 (2015) (quoting State v. Davis, 104 N.J. 490, 506 (1986)). Reports from such a "citizen 'may be regarded as trustworthy and information imparted by [the citizen] to [the] police[] concerning a criminal event would not

especially entail further exploration or verification of [the citizen's] personal credibility or reliability before appropriate police action is taken.'" Ibid.

In the context of erratic driving, our Supreme Court has held that a report from even a putatively anonymous 9-1-1 caller may be sufficient to support an investigative stop. Golotta, 178 N.J. at 218-22. The Court gave three reasons for this holding. First, a call to 9-1-1 "carries enhanced reliability." Id. at 218. By statute, telecommunications carriers are required to "furnish public-safety agencies with specific information in respect of any telephone used to initiate a 9-1-1 call." Ibid. (citing N.J.S.A. 52:17C-10(a)). Further, "false reporting of emergencies," explicitly including calls to 9-1-1, is criminalized. Id. at 219 (citing N.J.S.A. 2C:33-3(e)). These factors lend 9-1-1 callers "a fair degree of reliability," like that enjoyed by a citizen informer. Id. at 219-20.

Second, the Golotta Court discussed the "nature of the intrusion at issue" in motor vehicle stops. Id. at 220. The Court explained that, while New Jersey's protection against an unreasonable search and seizure is strong, "the fact remains that in the hierarchy of interests, '[t]here is a lesser expectation of privacy in one's automobile . . . than in one's home.'" Ibid. (quoting State v. Johnson, 168 N.J. 608, 625 (2001)) (first alteration in original) (distinguishing between "an investigatory stop" versus "a full-blown search"). Ibid.

Third, the Court emphasized "a reduced degree of corroboration" is warranted because "the reality [is] intoxicated drivers pose a significant risk to themselves and to the public." Id. at 221 (citing State v. Tischio, 107 N.J. 504, 519 (1987)). This grim reality, the Court held, lent a level of exigency and concern for public safety which affects the constitutional evaluation. Ibid. The Court concluded: "The risk to life and safety posed by an intoxicated or erratic driver convinces us that it is reasonable and, therefore, constitutional for the police to act on information furnished by an anonymous 9-1-1 caller without the level of corroboration that traditionally would be necessary to uphold such action." Ibid.

The Court cautioned that not "any information imparted by a 9-1-1 caller will suffice." Ibid. Rather,

> [t]he information must convey an unmistakable sense that the caller has witnessed an ongoing offense that implicates a risk of imminent death or serious injury to a particular person[,] such as a vehicle's driver or to the public at large. The caller also 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.
>
> [Id. at 221-22.]

The Court stopped short of holding that "no corroboration or predictive information is necessary in this setting." Id. at 222. It instructed:

> the 9-1-1 caller must provide a sufficient quantity of information, such as an adequate description of the vehicle, its location and bearing, or "similar innocent details, so that the officer, and the court, may be certain that the vehicle stopped is the same as the one identified by the caller."
>
> [Ibid. (quoting United States v. Wheat, 278 F.3d 722, 731 (8th Cir. 2001)).]

When assessing whether a stop is supported by reasonable suspicion, a trial court need not confine itself to examining the field officer's knowledge. State v. Crawley, 187 N.J. 440, 457 (2006). "It is understood 'that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.'" Ibid. (quoting United States v. Robinson, 536 F.2d 1298, 1299 (9th Cir. 1976)).

To that end, "information possessed by [a] dispatcher [is] imputed to responding police officers, and that dispatcher's knowledge, not responding officers', [is] essential for determining probable cause." Ibid. (citing United States v. Hensley, 469 U.S. 221, 230-31 (1985)). Thus, "if the dispatcher . . .

[is] provided adequate facts from a reliable informant to establish a reasonable suspicion that [an offense has been committed] . . . common sense tells us . . . the dispatcher ha[s] the power to delegate the actual stop to officers in the field." Ibid. (citing Robinson, 536 F.2d at 1300).

Given defendant's challenge to the relevancy of White's testimony, we also note our Rules of Evidence prescribe that "all relevant evidence," that is, "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action," "is admissible except as otherwise provided." N.J.R.E. 401, 402. Relevance is a low bar, cleared by any evidence that "even obliquely" supports or contradicts the existence of a material fact. Verdicchio v. Ricca, 179 N.J. 1, 34 (2004).

Relevant evidence "may be excluded if its probative value is substantially outweighed by the risk of . . . undue prejudice." N.J.R.E. 403(a). Such evidence "should be barred under N.J.R.E. 403 if the probative value of the evidence is so significantly outweighed by [its] inherently inflammatory potential as to have probable capacity to divert the minds of the [finder of fact] from a reasonable and fair evaluation of the issues." State v. Santamaria, 236 N.J. 390, 406 (2019) (internal quotation marks omitted) (quoting State v. Cole, 229 N.J. 430, 448 (2017) (first alteration in original)).

Guided by these principles, we disagree with defendant's argument that there was "no sufficient legal basis . . . to stop [his] vehicle" considering "Gansel did not investigate . . . the report that there was any 'erratic driving' taking place or danger presented to others . . . before seizing" him. We also are not convinced, despite defendant's contention to the contrary, that "White's testimony was irrelevant to the motion issue."

As the Court emphasized in Crawley, policework is not a solitary activity. 187 N.J. at 457. Dispatchers must be allowed to "delegate" and field officers must be allowed to "act on directions." Ibid. Therefore, what the dispatcher knew and communicated to Gansel prior to the stop was relevant. Additionally, to the extent White testified: he was the citizen informer who called the dispatcher on the night of the incident; he told the dispatcher he was following an erratic driver in a dark-colored SUV who was "all over the road"; and he gave the dispatcher the SUV's location shortly before Gansel spotted it in the same area (Arapaho Trail), we are satisfied this testimony was relevant to the lawfulness of the stop.

Additionally, we are persuaded White's testimony was more probative than prejudicial in corroborating Gansel's testimony about what the dispatcher told him, thereby tending to prove the lawfulness of the stop. We also agree

with the Law Division judge that the erratic driving White witnessed and communicated to the dispatcher "provided the dispatcher with an unmistakable sense that the [d]efendant put the public at large in danger," enhancing White's reliability as an informant. Thus, we decline to conclude the judge mistakenly found the stop lawful or that he improperly considered White's testimony as it pertained to the lawfulness of the stop.

Defendant next argues there was no probable cause for his arrest or "a sufficient basis to require him to submit to a breath test." Again, we disagree.

"Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed." State v. Moore, 181 N.J. 40, 46 (2004) (alterations in original) (quoting Schneider v. Simonini, 163 N.J. 336, 361 (2000)). "In determining whether there was probable cause to make an arrest, a court must look to the totality of the circumstances and view those circumstances 'from the standpoint of an objectively reasonable police officer.'" Basil, 202 N.J. at 585 (citations omitted). "[A] showing of probable cause to arrest for DWI only require[s] proof by a fair preponderance of the evidence." Karins v. Atlantic City, 152 N.J. 532, 559 (1998) (citations omitted).

A person violates N.J.S.A. 39:4-50(a) when they "operate[] a motor vehicle while under the influence of intoxicating liquor, . . . or operate[] a motor vehicle with a blood alcohol concentration of 0.08% or more." This standard requires less than a defendant being "absolutely 'drunk,' in the sense of being sodden with alcohol," but "more than having partaken of a single drink." Johnson, 42 N.J. at 164-65 (quoting State v. Emery, 27 N.J. 348, 355 (1958)). One who is "under the influence" experiences "a substantial deterioration or diminution of the mental faculties or physical capabilities" because of an intoxicant. State v. Bealor, 187 N.J. 574, 589 (2006) (quoting State v. Tamburro, 68 N.J. 414, 421 (1975)). This is "a condition which so affects the judgment or control of a motor vehicle operator as to make it improper for [them] to drive on the highway." Ibid. (citation omitted).

Just as the police may not arrest a person absent probable cause, they may not request that a driver submit to a breath test without "reasonable grounds to believe that such person has been operating a motor vehicle in violation of [N.J.S.A. 39:4-50]." N.J.S.A. 39:4-50.2(a). "The courts have interpreted 'reasonable grounds' . . . to mean 'probable cause.'" Richmond & Burns, N.J. Municipal Court Practice § 26:2-1 (2023) (citations omitted).

"[E]vidence of slurred speech, loud and abrasive behavior, disheveled

appearance, red and bloodshot eyes and [a] strong odor of [an] alcoholic beverage on [a] defendant's breath [is] sufficient to sustain a conviction for DWI." State v. Cryan, 363 N.J. Super. 442, 455-56 (App. Div. 2003) (citing State v. Morris, 262 N.J. Super. 413, 421 (App. Div. 1993)). Additionally, a DWI conviction may be sustained based on an officer's observations of a defendant's watery eyes, slurred and slow speech, staggering, inability to perform field sobriety tests, and admission to drinking alcohol earlier in the day. See State v. Oliveri, 336 N.J. Super. 244, 251-52 (App. Div. 2001).

Based on these standards, we have no reason to disturb the Law Division judge's finding that here, "officers had a well-grounded suspicion that [d]efendant was operating a motor vehicle under the influence of alcohol." As the judge noted, the State demonstrated: Gansel "was put on notice by the dispatcher of [d]efendant's erratic driving"; "[d]efendant admitted to consuming at least one vodka drink earlier in the evening"; Gansel "detected an odor of alcohol" after defendant exited the SUV; "[d]efendant had . . . watery eyes" and "slightly slurred speech"; and he "performed poorly on . . . the SFSTs." We agree with the judge that these facts, in the aggregate: "would lead" "an objectively reasonable police officer" "to the well-grounded suspicion that [d]efendant was under the influence while operating his motor vehicle."

Therefore, the police had probable cause for defendant's arrest and were legally justified in asking defendant to submit to the Alcotest.

Finally, defendant contends the Law Division judge erred in admitting the readings from the Alcotest. His arguments about the admissibility of the Alcotest results fall into two categories: those relating to the officers' pre-test observation, and those relating to the operation of the Alcotest machine.

As to the first category, defendant argues "[t]he State put no details into the record to establish convincing proof of what 'observation' there was of" defendant. Regarding the second category, defendant contends "[t]he State did not comply with the legal requirements to enter the breath test results into evidence" because it failed to: "properly address the operation of the Alcotest machine in discovery or at the hearing"; "provide required discovery materials regarding operation of the Alcotest machine"; "produce the operator's credentials"; and "establish that the proper procedures were followed for the administration of the breath test." None of these arguments are convincing.

Admissibility of the BAC test used in this case — the Alcotest 7110 MKIII-C — is governed by the Supreme Court's decision in Chun. 194 N.J. at 54. To ensure only reliable test results are admitted into evidence, and the introduction of those results does not violate the Confrontation Clause of the

Federal Sixth Amendment, the Court established a series of preconditions for the admission of Alcotest readings. Id. at 91-92, 134-48. Broadly, Chun requires a showing that "(1) the device was in working order and inspected according to procedure; (2) the operator was certified; and (3) the test was administered according to official procedure." Id. at 134 (citing Romano v. Kimmelmann, 96 N.J. 66, 81 (1984)). It is the State's responsibility to prove, by clear and convincing evidence, that all conditions of admissibility have been met. State v. Cassidy, 235 N.J. 482, 549 (2018); State v. Ugrovics, 410 N.J. Super. 482, 489 n.1 (App. Div. 2009) (specifically discussing the observation period).

Importantly, the Court recognized in Chun that "unlike the breathalyzer, the Alcotest is not 'operator-dependent,' meaning that the device is not subject to influences from the operator." 194 N.J. at 140. Thus, "the operator . . . play[s] a relatively lesser role . . . than has been the case in the past." Ibid. Moreover, the Court observed, "nothing that the operator does can influence the machine's evaluation of the information or its report of the data." Id. at 147.

However, the Court also noted one potential source of error in an Alcotest reading is residual alcohol in the mouth, which may cause the machine to "overestimate[] readings." Id. at 79. To guard against this error, the Court held

an arrestee must be observed for twenty minutes prior to administration of the Alcotest test, recognizing "[t]he software [for the Alcotest] is programmed to prohibit operation of the device before the passage of twenty minutes from the time entered as the time of the arrest." Ibid.

Once the twenty-minute observation period begins, the observer must ensure the arrestee does "not ingest, regurgitate or place anything in [their] mouth that may compromise the reliability of the test results." Ugrovics, 410 N.J. Super. at 489-90 (citation omitted). This "observation may be conducted through non-visual as well as visual means, so long as the observer is able to detect whether the driver has ingested or regurgitated something that would confound the Alcotest results." State v. Carrero, 428 N.J. Super. 495, 513 (App. Div. 2012), overruled in part on other grounds by State v. Stein, 225 N.J. 582, 595 n.9 (2016) (citing State v. Filson, 409 N.J. Super. 246, 258-61 (Law Div. 2009)). The twenty-minute observation period need not be conducted by the officer who administers the Alcotest. Ugrovics, 410 N.J. Super. at 489-90.

Here, defendant argues the State's proofs regarding the twenty-minute observation period were lacking because "the officers' testimony only discussed 'observations' in the most general terms." This assertion is belied by the record. In fact, as the Law Division judge found, the credible testimony of Officers

Gansel and Heffner showed they continuously observed defendant after his arrest, starting at 11:25 p.m., and Gansel did not administer the first breath test until 11:49 p.m., meaning the officers collectively observed defendant for a total of twenty-four minutes before Gansel administered the Alcotest.[6] Their unrefuted testimony also established they were sufficiently close to defendant during the observation period to note any issues that might otherwise lead to inaccurate test results. Therefore, we decline to find the judge mistakenly rejected defendant's challenge to the lawfulness of the twenty-minute observation period.

Similarly, we perceive no error in the judge's determination that the Alcotest was admissible, notwithstanding the fact, as the judge found, that "Heffner turned on the machine and typed in [d]efendant's pedigree information." Here, the record reflects that after Heffner performed these ministerial tasks, the officers "wait[ed] for the ambient air check" and for "the machine to be ready for the . . . defendant." Further, according to Officer Gansel, "the first ambient air check was [at 11:46 p.m.]," and after the ambient air check, he "went back out to the Alcotest [room] and . . . placed the . . . mouthpiece on

[6] We note that during the initial suppression hearing in municipal court, defense counsel agreed "more than one officer can . . . conduct the observation period."

the hose" before personally conducting the first breath test. Gansel also testified that between the first and second breath test, he "put a . . . brand new mouthpiece on the hose" and then proceeded to conduct the second breath test.

The Law Division judge credited this testimony in finding only Gansel operated the Alcotest. Moreover, there is nothing in the record to suggest Heffner had any involvement with the Alcotest machine beyond turning it on and typing in defendant's pedigree information. In fact, the evidence shows Heffner escorted defendant back and forth between the testing and detention rooms and left Gansel to prepare for and perform the first and second tests. Therefore, we agree with the judge's determination that Heffner's involvement in setting up the machine by turning it on and typing in defendant's "pedigree information" was "so benign, negligible, and inconsequential that he cannot be held to the same standard as Officer Gansel[,] who actually conducted the tests."

Likewise, we find no fault with the judge's finding that "Heffner's trivial actions reasonably could not have compromised the results of the test in any way" and "Gansel was the one who changed the mouthpiece and administered both breath tests, and his credentials were turned over in discovery." We also concur with his conclusion that although Heffner testified under cross-examination that he is a certified Alcotest operator, he was not an "'operator'

within the meaning of Chun, . . . [so,] his credentials were not required to be disclosed."

As we noted in Ugrovics, "the operator's principal role is to ensure that the procedures leading to the actual taking of the test have been strictly followed." 410 N.J. Super. at 490. But we also observed "one of the benefits associated with the Alcotest is its automation, which is intended to reduce the role of the operator and thereby minimize the potential for human error." Ibid. Thus, in Ugrovics, we held an Alcotest operator did not have "the exclusive responsibility to monitor the test subject" during the twenty-minute observation period. Ibid. In reaching this conclusion, we found it inappropriate to "elevate[] form over substance and place[] an importance on the operator that is inconsistent with what the Chun Court envisioned to be his or her diminished role." Ibid. (citing Chun, 194 N.J. at 141 n.44).

We are satisfied the logic we employed in Ugrovics also applies here. That is to say, we see no reason to place "form over substance" and disturb the denial of defendant's suppression motion as to the Alcotest results simply because Heffner played a brief role in setting up the machine before Gansel proceeded to administer the Alcotest.

We hasten to add we would not have reached this conclusion had the State failed to demonstrate: it produced the foundational documents required under Chun without objection from the defense; those foundational documents included Gansel's credentials as the Alcotest operator; and both officers were subject to cross-examination regarding their credentials and the tasks they performed following defendant's arrest. Thus, under these unique circumstances, we concur with the Law Division judge that "[t]he absence of Officer Heffner's [physical] credentials [at the suppression hearing did] not render the Alcotest reading[s] inadmissible."

Because we have addressed the merits of defendant's Alcotest arguments, we need not address the State's contention that defendant's stipulation at the suppression hearing constituted a waiver of his right to challenge the admissibility of the Alcotest results "on the grounds that a foundational document (Heffner's certification card) [was] not produced." However, for the sake of completeness, we observe that a fair reading of the record shows defense counsel entered into the stipulation based on a misunderstanding that Heffner had no involvement in preparing the Alcotest machine for the breath tests. Once counsel discovered that was not the case, he brought it to the municipal judge's attention, see e.g., State v. Bailey, 231 N.J. 474, 488 (2018) (allowing the use

of a stipulation where the waiver of rights was "knowing and voluntary"). The municipal court judge then permitted the defense to further cross-examine Officer Gansel about each officer's role in preparing the Alcotest machine for the breath tests.

Under these circumstances, and despite the fact defense counsel did not move to set aside the stipulation after cross-examining both officers, or at any point during the suppression hearing, we disagree with the State that defendant was barred from challenging the admissibility of the Alcotest readings on grounds other than the twenty-minute observation period.

Regarding defendant's argument that the judge erred in admitting the results of the Alcotest because the State "failed to provide required discovery materials" related to the officers' "operation" of the test, we disagree for the reasons already stated. Moreover, on this record, we are not convinced any failure on the State's part to provide the discovery at issue compelled the suppression of the Alcotest readings.

When a discovery obligation has not been met, "the court may order [the offending] party to provide the discovery of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate." R. 7:7-7(j).

But even in a criminal case, where a defendant's constitutional rights must be safeguarded, a trial court is free to issue no sanctions for discovery violations if it sees fit, particularly where the prosecutor did not intend to mislead the defendant and the defendant "makes no significant argument of prejudice." State v. Wolfe, 431 N.J. Super. 356, 363 (App. Div. 2013). "A trial court's resolution of a discovery issue is entitled to substantial deference and will not be overturned absent an abuse of discretion." Stein, 225 N.J. at 593 (citing State v. Hernandez, 225 N.J. 451, 461 (2016)).

Here, the Law Division judge found "no violation of Chun [or] the discovery rules." (emphasis added). Moreover, in addressing defendant's discovery concerns and his challenges to the admissibility of the Alcotest beyond what was envisioned under the parties' stipulation, the municipal court judge allowed defense counsel to cross-examine Gansel as a rebuttal witness after counsel had already availed himself of the opportunity to cross-examine Gansel and Heffner about their involvement in preparing and administering the Alcotest. We are not convinced the judge was required to do more under the circumstances.

Defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed. The stay of sentence and penalties is vacated. We remand to the Law Division to vacate its stay of the municipal court sentence. We do not retain jurisdiction.