SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2031-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAYMOND N. BOBEA,

Defendant-Appellant.

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Argued March 7, 2023 – Decided April 10, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 18-06-0097.

Cody T. Mason, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Cody T. Mason, of counsel and on the briefs).

Steven K. Cuttonaro, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Steven K. Cuttonaro, of counsel and on the brief).

PER CURIAM

Following denial of his suppression motion, defendant Raymond M. Bobea pled guilty to first-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(1), charged in a three-count state grand jury indictment.[1] Defendant was sentenced in September 2020 to an eight-year prison term as a second-degree offender.[2] See N.J.S.A. 2C:44-1(f)(2). Before the motion judge, defendant challenged the validity of the stop of his motor vehicle on the New Jersey Turnpike, the ensuing consent search of his car, and his statements to police. On appeal, defendant limits his argument to the validity of the motor vehicle stop and search, raising the following points for our consideration:

[1] Following the State's disclosure of potential exculpatory or impeachment material under Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972), defendant successfully moved to reopen the suppression hearing. However, defendant pled guilty before the reopened hearing was held.

[2] Defendant's sentence initially included a twenty-four-month parole disqualifier, but the court amended the sentence because defendant surrendered to the corrections center by an agreed-to date. The remaining charges, third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1), and third-degree money laundering, N.J.S.A. 2C:21-25(a), were dismissed pursuant to the negotiated plea agreement.

POINT I

THE CAR STOP WAS ILLEGAL AND SUPPRESSION IS REQUIRED BECAUSE THE STATE FAILED TO PROVE THAT DEFENDANT COMMITTED A TRAFFIC OFFENSE WHEN HE CHANGED LANES WITHOUT SIGNALING OR THAT THE POLICE HAD REASONABLE AND ARTICULABLE SUSPICION BASED ON WHAT THE STATE CONCEDED WAS AN INSUFFICIENTLY RELIABLE TIP.

A. The Troopers Could Not Stop Defendant Based on His Lane Change Because the State Failed to Show That It Was Unsafe or May Have Affected Traffic.

B. The Tip Did Not Create Reasonable Suspicion Because the Informant Was Unknown, the Tip Provided Few Details, and the Police Did Not Corroborate Hard-to-Know Facts.

POINT II

SUPPRESSION IS REQUIRED BECAUSE THE TROOPERS DID NOT HAVE REASONABLE AND ARTICULABLE SUSPICION TO REQUEST CONSENT TO SEARCH DEFENDANT'S CAR.

Because we conclude the police stop was reasonable based on the officer's observations that defendant committed a motor vehicle infraction, we reject the contentions raised in point IA; our disposition makes it unnecessary to reach the claims made in point IB. In view of the totality of the circumstances preceding the stop, we also reject the contentions raised in point II.

I.

We summarize the pertinent facts and procedural history from the testimony adduced at the one-day suppression hearing. The State called Detective Sergeant Jeovanny Rodriguez, an eighteen-year veteran of the New Jersey State Police (NJSP) and member of the Trafficking North Unit (TNU). Defendant did not testify or produce any witnesses, but moved into evidence certain documents, including the report of Special Agent Peter Strauss of the Drug Enforcement Agency (DEA).

On November 2, 2017, Rodriguez was the case agent assigned to a drug-trafficking investigation in Woodbridge. Sometime before noon, Rodriguez received a call from DEA Special Agent Soterios Malamas, whose team was conducting a large-scale narcotics investigation. The TNU and Malamas's team had a working relationship, having "shared a lot of intelligence before and [after the present incident]." Rodriguez considered Malamas's prior information reliable.

Malamas relayed to Rodriguez real-time information from a confidential informant (CI) that Malamas considered credible. The CI said "an individual driving a red Honda, possibly an Accord" would "be stopping somewhere on the Turnpike, possibly the Thomas Edison rest area." The CI "[wa]s well aware that

[the] individual w[ould] be trafficking unknown amounts of narcotics in this vehicle along the Turnpike and [wa]s supposed to meet someone at the Thomas Edison rest area." The CI indicated the individual would be traveling alone but did not know with whom the individual would be meeting. The CI did not provide the individual's sex, race, height, or weight. Nor did the CI disclose the license plate number or whether the car had two or four doors.

Malamas apparently told Rodriguez the source of the CI's knowledge but, in view of the ongoing nature of the investigation, Rodriguez refused to testify about those details. Rodriguez acknowledged he never had any prior dealings with the CI, was unaware of the CI's identity, and was not "privy to the arrangements between the CI and the DEA."

Pursuant to ongoing information provided by the CI via Malamas, around 3:30 p.m. or 4:00 p.m., the NJSP established surveillance on the Turnpike and at the Thomas Edison rest area. Rodriguez was in the "takedown vehicle" just beyond the off-ramp before the service area. Around 4:40 p.m., officers stationed in the rest area radioed Rodriguez that they saw a red Honda bearing a New York license plate enter the service area. Police ran a computer check of the license plate, determined the Honda was registered to defendant, and conveyed that information to Rodriguez. Defendant parked his car then exited,

but "[d]id not enter the rest area for any reason at all." Instead, defendant "[j]ust kind of paced around the car outside, back and forth on his cell phone." Defendant was alone and did not meet with anyone.

On cross-examination, defense counsel confronted Rodriguez with Strauss's report indicating the DEA also had "established surveillance along the New Jersey Turnpike and the Thomas Edison service area." Rodriguez stated he was in telephonic contact with DEA agents but was unaware of their precise location. According to Strauss's report, "he observed [defendant] walk inside of the travel plaza." Rodriguez indicated he had not received that information prior to stopping defendant and had not seen Strauss's report until he testified.

Around 5:07 p.m., defendant drove out of the service area and merged into the right center lane of the Turnpike. Rodriguez positioned "[his] unmarked vehicle right behind the Honda," and saw "defendant move[] to the right lane, looking to get onto the Parkway ramp without using his turn signal." Defendant "kind of swerved and then swerved to the right lane without . . . using his directional." Rodriguez stopped the Honda "based on the information [the NJSP] had received," "confirmation" of that information, and "the traffic violation."

Defendant produced his credentials and responded to questions posed by Rodriguez's partner about his recent activity. Defendant claimed he had entered the Burger King at the rest area. "He said he was lost and was trying to get back home." Rodriguez, who was positioned on the passenger side of the Honda, could barely hear defendant's responses but noticed "he was rather nervous"; "could barely answer the questions"; "had a very low tone of voice"; and "seemed like he was out of sorts."

The officers asked defendant to step out of the vehicle so they could hear him better and because they thought "there might have been a language barrier." Rodriguez, who is fluent in Spanish, spoke with defendant in Spanish and English, but his itinerary did not make sense. Defendant claimed he became lost following his navigation system to meet a woman in Newark he knew only as "Maria." He said he left his home, crossed the Brooklyn Bridge and the Whitestone Bridge. Defendant did not make eye contact with the officers. He appeared so nervous that "[h]is carotid artery was just pumping out of his neck."

Officers asked for defendant's consent to search the Honda "[b]ased on the intelligence [they] had received from the DEA," the "itinerary[, which] did not match or make any sense," and defendant's "nervous demeanor." Defendant authorized the search and signed the consent-to-search form read to him by

Rodriguez. A search of the car revealed two mechanical traps, one of which contained two kilograms of heroin.

During oral argument before the motion judge, the State acknowledged the record did not establish the CI's credibility and reliability. Instead, the State claimed the "culmination . . . of the series of events," including the DEA's tip and the observations of the State Police detectives during their surveillance of defendant at the rest area provided sufficient grounds to follow defendant and his illegal lane change justified the motor vehicle stop. In addition to challenging the lack of specificity of the CI's tip, defendant contended the State failed to prove defendant violated the traffic law for which he was issued a summons, i.e., changing lanes without signaling, N.J.S.A. 39:4-88(b).

Following oral argument, the motion judge reserved decision and thereafter issued a written opinion that accompanied an April 1, 2019 order. The judge denied defendant's motion, finding the stop was justified on two grounds: (1) police had reasonable, articulable suspicion of criminal activity based on the CI's tip as corroborated by police surveillance; and (2) police observed defendant commit a motor vehicle infraction that violated N.J.S.A. 38:4-88(b), as charged, and N.J.S.A. 39:4-126, which neither was charged nor advanced by the State, or that Rodriguez, acting in good faith, had an objective basis for

stopping the car. The judge also found police had reasonable, articulable suspicion to seek defendant's consent to search the vehicle, and his consent was voluntarily given.

II.

Our review of the trial court's ruling on a motion to suppress evidence is circumscribed. We "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Ahmad, 246 N.J. 592, 609 (2021) (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.'" State v. Nyema, 249 N.J. 509, 526 (2022) (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 (2019) (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)). By contrast, we review de novo a trial court's interpretation of the law and the legal "consequences that flow from established facts." State v. Gamble, 218 N.J. 412, 425 (2014).

A. The Validity of the Stop

Defendant first challenges the motion judge's decision that the stop was valid based on defendant's commission of a motor vehicle infraction. Defendant maintains the State failed to demonstrate it was unsafe for him to change lanes or that his actions may have affected traffic in violation of N.J.S.A. 39:4-88(b). Defendant further argues the judge erroneously read N.J.S.A. 39:4-88(b) in pari materia with N.J.S.A. 39:4-126,[3] and wrongly concluded that even if a motor vehicle offense had not occurred, Rodriguez stopped defendant's car in good faith.

"A lawful roadside stop by a police officer constitutes a seizure under both the Federal and New Jersey Constitutions." State v. Dunbar, 229 N.J. 521, 532

[3] N.J.S.A. 39:4-126 states, in relevant part:

> No person shall turn a vehicle . . . from a direct course or move right or left upon a roadway, or start or back a vehicle unless and until such movement can be made with safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2017). "To be lawful, an automobile stop 'must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.'" State v. Bacome, 228 N.J. 94, 103 (2017) (quoting State v. Carty, 170 N.J. 632, 639-40, modified on other grounds, 174 N.J. 351 (2002)); see also State v. Bernokeits, 423 N.J. Super. 365, 370 (App. Div. 2011) (recognizing "no matter how minor," a motor vehicle violation "justifies a stop without any reasonable suspicion that the motorist has committed a crime or other unlawful act"). "[A] stop founded on a suspected motor vehicle violation essentially is governed by the same case law used to evaluate a stop based on suspected criminal or quasi-criminal activity." State v. Woodruff, 403 N.J. Super. 620, 624 (App. Div. 2008) (alteration in original) (quoting State v. Golotta, 178 N.J. 205, 213 (2003)).

"[T]he State is not required to prove that the suspected motor-vehicle violation occurred." State v. Locurto, 157 N.J. 463, 470 (1999). Rather, "[c]onstitutional precedent requires only reasonableness on the part of the police, not legal perfection. Therefore, the State need prove only that the police lawfully stopped the car, not that it could convict the driver of the motor-vehicle offense." State v. Williamson, 138 N.J. 302, 304 (1994).

The traffic regulations embodied in N.J.S.A. 39:4-88 apply "[w]hen a roadway has been divided into clearly marked lanes for traffic." Pertinent to this appeal, the statute requires "[a] vehicle [to] be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." N.J.S.A. 39:4-88(b); see also State v. Regis, 208 N.J. 439, 443 (2011).

In Regis, our Supreme Court analyzed the construction of N.J.S.A. 39:4-88(b), in view of its legislative history, and determined the paragraph "consists of two separate, independent clauses, each of which addresses a distinct offense." Id. at 447. The Court elaborated:

> The statute's two clauses address different circumstances. The first clause imposes a continuous requirement upon the driver: to maintain his or her vehicle in a single lane, by avoiding drifting or swerving into an adjoining lane or the shoulder, unless it is not feasible to do so. . . .
>
> [T]he first clause of N.J.S.A. 39:4-88(b) is not limited to circumstances in which the deviation from the lane is demonstrated to be a danger to other drivers. . . .
>
> The statute's second clause addresses a related, but discrete, mandate of the [Uniform Vehicle] Code. It requires a driver to ascertain the safety of switching lanes before conducting a lane change. . . . Unlike the violation described in the first clause of N.J.S.A. 39:4-

> 88(b), the violation described in the second clause is avoided if a driver, in a roadway with multiple lanes traveling in the same direction, first determines that departure from a lane may be conducted safely.
>
> [Id. at 448-49.]

Accordingly, the statute does not "preclude[] only unsafe lane changes." Id. at 450.

In the present matter, defendant claims his conduct did not contravene the first clause of the statute because he intended to change lanes and was pulled over for failing to signal, not failing to maintain the lane. He further contends the statute's second clause was inapplicable because the record was devoid of any evidence his lane change placed other drivers at risk. We are unpersuaded.

According to Rodriguez's unrefuted testimony – deemed "very credible" by the motion judge – police had reasonable, articulable suspicion that defendant violated both clauses of N.J.S.A. 39:4-88(b). Rodriguez positioned his car "right behind the Honda" such that he was close enough to confirm the license plate number as previously conveyed by the surveilling officers. Within that close proximity, Rodriguez observed defendant "swerve[] to the right lane without . . . using his turn signal." Because defendant failed to maintain the car in his lane and swerved into the adjoining lane, defendant's actions could be considered a violation of the statute's first clause. Given the proximity of the

two cars, defendant's swerving action is indicative that he changed lanes without first ascertaining whether he could have done so safely in violation of the statute's second clause.

Because we conclude police had reasonable, articulable suspicion that defendant violated N.J.S.A. 39:4-88(b), we need not reach the judge's other bases for upholding the stop. We note, however, that to the extent the judge read together N.J.S.A. 39:4-88(b) and N.J.S.A. 39:4-126 to justify the stop, that decision was erroneous. "[A] court may not rewrite a statute or add language that the Legislature omitted." State v. Munafo, 222 N.J. 480, 488 (2015).

Nor are we persuaded by the motion judge's alternate finding had there been no infraction "due to a technical analysis of the two motor vehicle statutes," Rodriguez acted "in good faith" when he stopped defendant's car. The Court has made clear that "[a]lthough reasonable suspicion is a less demanding standard than probable cause . . . 'an arresting officer's subjective good faith can[not] justify infringement of a citizen's constitutionally guaranteed rights.'" Nyema, 249 N.J. at 527 (quoting State v. Stovall, 170 N.J. 346, 372 (2002) (Coleman, J., concurring in part and dissenting in part)).

B. The Consent Search

Defendant maintains police lacked reasonable, articulable suspicion to seek his consent to search the Honda. Acknowledging the CI's reliability was unknown to the NJSP, the motion judge concluded reasonable and articulable suspicion was established because police "independently corroborated" the CI's tip. The judge also found defendant's consent was voluntarily given.

"Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004); see also Nelson, 237 N.J. at 552. To overcome this presumption, the State must show by a preponderance of evidence that the search falls within one of the well-recognized exceptions to the warrant requirement. State v. Bryant, 227 N.J. 60, 69-70 (2016). A consent search is one such exception to the warrant requirement. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); State v. Johnson, 68 N.J. 349, 353-54 (1975). It is, of course, fundamental that consent to search must be voluntary. Bustamonte, 412 U.S. at 222. Voluntariness, however, is not challenged in this case.

Instead, defendant contends police lacked reasonable and articulable suspicion that the search of his car would produce evidence of wrongdoing contrary to the Court's holding in Carty, 170 N.J. at 635. This standard was

developed specifically to address "unreasonable intrusions when it comes to suspicionless consent searches following valid motor vehicle stops." Id. at 646. The Court intended to deter "the widespread abuse of our existing law that allows law enforcement officers to obtain consent searches of every motor vehicle stopped for even the most minor traffic violation." Ibid. An "objective standard [was] imposed to restore some semblance of reasonableness" to requests for consent to search during routine motorist/police encounters. Ibid. "A consent search of a validly stopped car without the requisite suspicion will result in exclusion of the evidence at trial." Elders, 192 N.J. at 230 (citing Carty, 170 N.J. at 647-48).

In Elders, the Court concluded "nervousness and conflicting statements, along with indicia of wrongdoing, can be cumulative factors in a totality of the circumstances analysis that leads to a finding of reasonable and articulable suspicion of ongoing criminality." 192 N.J. at 250. Standing alone, however, nervousness and furtive gestures are insufficient to constitute reasonable and articulable suspicion. Carty, 170 N.J. at 648; see also Nyema, 249 N.J. at 530.

In Nyema, the Court reiterated that "nervous behavior or lack of eye contact with police cannot drive the reasonable suspicion analysis given the wide range of behavior exhibited by many different people for varying reasons

while in the presence of police." 249 N.J. at 533. Further, "a suspect's conduct can be a factor, but when the conduct in question is an ambiguous indicator of involvement in criminal activity and subject to many different interpretations, that conduct cannot alone form the basis for reasonable suspicion." Id. at 534.

In the present matter, however, the State demonstrated that the officers had an objective reasonable and articulable suspicion to request consent to search. Defendant was not merely nervous but overly so. As Rodriguez explained, defendant failed to make eye contact and his "carotid artery was just pumping out of his neck." But police did not develop reasonable suspicion based on defendant's nervousness alone. Defendant's itinerary did not make sense; he was unaware of "Maria's" last name; and he said he entered the Burger King at the rest stop, contrary to the NJSP's observations. Although the State acknowledged the CI's tip alone did not establish reasonable suspicion to stop the car, it was one of many factors. The totality of the circumstances gave rise to reasonable and articulable suspicion to seek defendant's consent to search the Honda.

In summary, based on our review of the record, we discern no basis to disturb the motion judge's order, albeit for slightly different reasons. See Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) (allowing an appellate

court to affirm for other reasons because "appeals are taken from orders and judgments and not from opinions").

Affirmed.

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

CLERK OF THE APPELLATE DIVISION