

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004973-18

STATE OF NEW JERSEY,
Plaintiff-Respondent,
v.
JALEN CARR,
Defendant-Appellant.

:
:
:
: **CRIMINAL ACTION**
:
: On Appeal from an Order of
: Detention of the Superior Court
: of New Jersey, Law Division,
: Camden County.
: COMPL. NO. 0408-W-2019-004052
:
: Sat below:
:
: Hon. Edward J. McBride, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS CONFINED

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PROCEDURAL HISTORY

Defendant was arrested on July 5, 2019, and charged with two counts of robbery, in violation of N.J.S.A. § 2C:15-1(A)(1), possessing a firearm for an unlawful purpose, in violation of N.J.S.A. § 2C:39-4(A)(1), possession of a handgun without a license, in violation of N.J.S.A. § 2C:39-5(B)(1), and criminal conspiracy to commit robbery, in violation of N.J.S.A. 2C:5-2(A)(1).

The State moved to detain Defendant pending resolution of the charges. And on July 11, 2019, a hearing was held before the Honorable Edward McBride, J.S.C., on the State's detention motion.

No live witnesses were offered at the hearing. Both the State and Defendant proceeded by way of proffer and marked exhibits. The State relied on the Complaint-Warrant, which included the affidavit of probable cause and preliminary law enforcement incident report (hereinafter "PLEIR"), as well as Defendant's Public Safety Assessment (hereinafter "PSR") (Da009-011, Da15, Da030-039). Defendant, through counsel, relied on a wanted poster that law enforcement had published to the public through the media, as well as a supplemental police report submitted by a sergeant with the Camden County Police Department (Da011, Da023, Da040-Da043).

At the hearing, Defendant contested that the State established probable cause to believe that he was the perpetrator

of the robberies (Da017). The lower court held, nonetheless, that "based both on what's in the actual exhibit (the complaint-warrant), as well as what has been proffered here by the Prosecutor based on his representations", the State established probable cause (Da020).¹

STATEMENT OF FACTS

Defendant concedes that the affidavit of probable cause established probable cause to believe that a robbery occurred and that two individuals perpetrated the crimes as charged.²

The factual dispute arose over the question of who were the perpetrators of the crimes and if the State established probable

¹ The hearing continued with arguments over whether Defendant should be detained based on safety to the community and flight risk. The lower court concluded that those factors favored detention. That portion of the lower court's ruling is not contested at this level.

² In relevant part, the affidavit of probable cause states as follows:

The victim stated that he was at a friend's house when two males came into the residence both armed with handguns and demanded their belongings. They reportedly took the victim['s] cell phone and his friend's wallet. A statement with the second victim was consistent with the first victim['s] statements. The second victim reported that Suspect 1 was a Black Male, 5'8'' wearing a blue hoodie and tan pants & Suspect 2 was a Black Male 5'11'' wearing a gray hoodie and black pants.

(Da037).

cause to believe that Defendant was one of the two assailants. The affidavit of probable cause set forth the following link between the crime and Defendant:

Video from the area of the incident revealed at approximately 0303 hours a light colored van later as a 2006 Chevrolet Uplander pull onto 3rd Street from Kaighns Avenue. The vehicle parked and two males were observed exiting the vehicle and walking in the area ultimately walking to the area of the robbery. Moments later the suspects enter the Uplander and leave the area. . . . While tracing the path of the vehicle it is learned that the vehicle stopped at a store near the incident. Video shows the Uplander pull in the store at approximately 0255 hours at which time a passenger exits wearing a gray hoodie and black pants with white strips on the side **who was later identified as Jalen Carr**. A still image was taken of Mr. Carr and distributed on social media and the news. On July 4th **a source contacted Police and identified the picture as Mr. Carr** and provided a phone number of where he could be reached and that he wanted to turn himself in. **Detectives made contact with Mr. Carr who stated that he wanted to turn himself in as a result of being in the media.**

(Da037) (emphasis added).

At the detention hearing, the State offered by way of oral proffer that:

On July 4th a source contacted police and identified the picture as Mr. Carr and provided a phone number of where he could be reached and that he wanted to turn himself in.

Detectives made contact with Mr. Carr, who stated that he wanted to turn himself in as - in as a result of being in the media.

(Da016-017).

Later at the hearing, the State orally proffered the following:

Judge, what [defense] counsel completely disregards is the idea that that source will then acknowledge that he was with Mr. Carr and then put Mr. Carr on the cell phone in which Mr. Carr identified himself to the police and stating that he wants to come in to talk about his - his being in the media.

. . .

This was a source who was identified to police. However, he was not identified in the probable cause statement. However, it was someone who was familiar with this defendant.

So to the acknowledgment, along with the identity - on - although it wasn't a specifically identified source in the probable cause statement, the source was identified and as well are known to the police officer.

(Da018).

Defendant, through counsel marked and moved into evidence the wanted poster that law enforcement published to the public via the media (Da011, Da040). The poster has a mug shot of Defendant from a prior arrest juxtaposed next to a still frame pulled from the recovered store surveillance footage and "JALEN CARR" printed in bold, red font beneath the two photographs. In addition, Defendant marked and moved into evidence a supplemental police report containing more detail about the telephone communications that the State described by oral proffer and in the affidavit of probable cause. That report stated that "a person of interest in this robbery had been identified. . . . [T]he subject had been

identified through a source as Jalen Carr. . . . According to what was being reported to [law enforcement], was that Jalen Carr was looking to turn himself in to authorities in this matter" (Da041).

The report went on to describe the telephone call as follows:

At 2248 hours, I placed a telephone call from my assigned department phone to 609-314-4914 in an attempt to reach Jalen Carr or his brother "Buggy". A male answered the telephone and I identified myself as Sgt. Kunkel of the Camden County Police Department and advised the male that I was attempting to get in contact with Jalen Carr. The male replied "yes", to wit I asked is this Jalen Carr and he replied "yes, it is". I then said I understand that you would like to come in and speak with us about you being in the media and he replied "yes". As I began to speak with him to make arrangements for him to come in, he cut me off and said that he would turn himself in "tomorrow morning", meaning July 5th.

(Da042).

LEGAL ARGUMENT

THE STATE FAILED TO ESTABLISH PROBABLE CAUSE THE DEFENDANT WAS ONE OF THE PERPETRATORS. THE STATE'S SO-CALLED "SOURCE" IS NOT SUFFICIENT, AND THE STATE'S CLAIM THAT DEFENDANT CONCEDED THAT HE WAS IN THE MEDIA IS IRRELEVANT TO THE INQUIRY.

(Raised Below: Da017)

As a predicate to detaining someone pretrial, the Criminal Justice Reform Act, N.J.S.A. § 2A:162-15, *et seq.*, (hereinafter "CJRA"), requires that, "[i]n pretrial detention proceedings for which there is no indictment, the prosecutor shall establish probable cause that the eligible defendant committed the

predicate offense.” N.J.S.A. § 2A:162-19(e)(2). See *State v. Pinkston*, 233 N.J. 495, 499 (2018) (at a detention hearing, “[i]f no indictment has been returned, the State must present proof of probable cause”).

Our Supreme Court adopted the United States Supreme Court’s holding in *Illinois v. Gates*, 462 U.S. 213 (1983), when assessing whether information provided to law enforcement from an informant can give rise to probable cause. See *State v. Smith*, 155 N.J. 83 (1998). “Two factors generally considered to be highly relevant, if not essential, that are included in the ‘totality of the circumstances’ are the informant’s ‘veracity’ and the informant’s ‘basis of knowledge.’ *Id.* at 93 (quoting *Gates*, 462 U.S. at 238).

Those two “essential factors” are absent from the State’s proffer. Indeed, all factors under the totality of the circumstances are missing. The State simply refers to the source of information as just that, a “source”. There is no indication as to the source’s basis of knowledge of the facts establishing probable cause. There is no indication as to the source’s reliability or veracity. During the course of the hearing, at times the State indicated that the “source” stated that the still photo was of Defendant and then provided phone number at which Defendant could be reached (Da037, Da016-017). But the state also proffered that the “source” was with Defendant and simply handed the cell phone to Defendant (Da018). Not only is the “source” seemingly

unreliable and contradictory, but so too is the State's proffer as a whole.

The lower court found the State's saving grace to be Defendant's supposed admission that he was the person whose identity was broadcast through the media (Da15-016). But the State fails to take into account the information that was published through the media. The wanted poster issued by the Camden County Police Department includes a high-resolution mug shot of Defendant from a prior arrest and has "JALEN CARR" written in big, bold red letters beneath the mug shot (Da040). Of course Defendant knew he was wanted: the poster had his name and his mug shot on it. And for that matter, the "source" may well have believed that Defendant was the perpetrator for precisely the same reason. That is why the United States Supreme Court and our Supreme Court have held that the basis of knowledge for an informant's tip is crucial. If an informant told the police Defendant did it because the police told the informant that Defendant did it, there can be no probable cause.

CONCLUSION

For any of these reasons, the Appellate Division should reverse the lower court's finding of probable cause, vacate the order detaining Defendant, and permit Defendant's release on his own recognizance.

Respectfully submitted,

/s/ David M. Simon

David M. Simon, Esq.

Attorney for Defendant-Appellant

DATED: July 25, 2019