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State v. Hudgen, 272 A.3d 1069 (R.I. 2022)

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Criminal Law. *State v. Hudgen*¸ 272 A.3d 1069 (R.I. 2022). Arresting officers may rely on departmental information they have received from official channels to establish probable cause to seize a defendant's vehicle. The raise-or-waive rule exception allows the Rhode Island Supreme Court to review an issue unraised at trial if failure to raise it was more than a harmless error and the issue has a constitutional aspect based on a novel rule of law unreasonable for counsel to have known about during the trial.

FACTS AND TRAVEL

On October 31, 2016, Tre'arra Hudgen and her co-perpetrator Julio Cano shot at her downstairs neighbor, Matthew Reverdes, as he escaped from a confrontation-turned-robbery in his apartment on Harrison Street in Pawtucket, Rhode Island.[1] Reverdes was later transferred to a hospital, where he died from a fatal gunshot wound to the chest.[2] In February 2017, a grand jury indicted Hudgen on seven counts, including: first-degree murder, discharge of a firearm in the commission of a crime of violence resulting in death, conspiracy to commit felony assault, felony assault with a dangerous weapon, robbery in the first degree, conspiracy to murder, and carrying a revolver without a license.[3]

Hudgen filed three motions to suppress evidence during pretrial proceedings.[4] Two of these motions concerned evidence found at Hudgen's apartment, while the third motion concerned evidence found in her red Honda.[5] In Hudgen's first motion to suppress, she argued that the affidavit supporting the warrant to search her apartment for evidence of Reverdes's murder had information insufficient to establish probable cause.[6] Hudgen argued that: (1) the

1. State v. Hudgen, 272 A.3d 1069, 1075-76 (R.I. 2022).
2. *Id.* at 1076.
3. *Id.*
4. *Id.* at 1077.
5. *Id.*
6. *Id*.

affidavit conclusively deemed the anonymous informant "reliable" with no other supporting facts; (2) the informant provided incorrect information about who lived at Hudgen's apartment[7]; and (3) the affidavit had no other information corroborating the fact that Cano had two guns.[8] The trial judge denied this motion, holding that the information in the affidavit amounted to probable cause to search Hudgen's apartment for evidence of Reverdes's murder.[9]

In Hudgen's second motion to suppress evidence, she argued that affiant, Pawtucket Police Department Detective Michael Coie, described the experience and training of fellow Detective David Silva as if it were his own in the supporting affidavit.[10] Hudgen argued that Coie's misrepresentation of his experience and training was material to the magistrate judge's probable cause finding because the judge determines whether an affiant's observations and inferences were reasonable based on their experience.[11] Further, Hudgen argued that the affidavit excluded Reverdes's dying declaration, in which he stated he did not know who shot him.[12] From there, Hudgen requested a *Franks* hearing[13] based on Detective Coie's misrepresentations.[14] The trial justice denied this motion finding that, notwithstanding Detective Coie's misrepresentations, there was other information in the affidavit sufficient to establish probable cause.[15]

In Hudgen's third motion to suppress evidence, she argued that the Court should suppress the evidence found in her red Honda because the Hartford Police Department lacked a lawful rationale for

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7. The informant erroneously described that Cano lived at 54 Harrison Street with Hudgen's romantic partner Juscelina DaSilva and five to six children. *See id.* The actual occupants were Hudgen, DaSilva, and DaSilva's three children. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 1077-78.

12. *Id.* at 1078.

13. A *Franks* hearing is a type of pretrial hearing a defendant is entitled to, upon request, after a substantial showing that an affiant made a false statement in a warrant "knowingly and intentionally, or with reckless disregard for the truth," and that alleged false statement was necessary for the finding of probable cause. *See* Franks v. Delaware, 438 U.S. 154 (1978).

14. *Hudgen*, 272 A.3d at 1078.

15. *Id.*

seizing her vehicle without a warrant.[16] In a hearing on this motion, Detective Silva testified that he requested Hartford police officers safe keep Hudgen's vehicle because she was a murder suspect.[17] However, Hudgen still challenged her vehicle's warrantless seizure, arguing that no Connecticut officer had testified about standard vehicle impound practice and procedure.[18] The trial justice denied Hudgen's motion, finding that the collective-knowledge doctrine[19] allowed Connecticut police to use the information Detective Silva supplied them to establish probable cause. [20]

Hudgen's murder trial occurred before a jury throughout October and November 2018.[21] During the trial, the State introduced the evidence gathered from Hudgen's apartment and vehicle, which included the murder weapons, Reverdes's diamond earrings, drugs and accompanying paraphernalia, and two bills of sale for Hudgen's red Honda.[22] Additionally, the State called multiple witnesses, including Hudgen's romantic partner, Juscelina DaSilva, with whom she lived.[23] During DaSilva's cross-examination, defense counsel questioned whether she had made a deal with police to keep her children out of the Department of Children, Youth and Families (DCYF) custody in exchange for a police statement.[24] However, the trial justice sustained the State's objection to this line of questioning and the defense counsel moved on without further comment.[25]

Upon resting its case, the State moved to dismiss the conspiracy to commit murder charge, which the trial judge dismissed with prejudice upon Hudgen's consent.[26] Following deliberations, the jury found Hudgen guilty on all the other counts.[27] The trial judge sentenced Hudgen to two concurrent life sentences followed by one

16. *Id.*
17. *Id.*
18. *Id.*
19. The collective-knowledge doctrine enables "[a]n arresting officer in the field to rely on departmental knowledge which comes to him through official channels." *See id.* (quoting State v. Castro, 891 A.2d 848, 853 (R.I. 2006)).
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 1078-79.
25. *Id.* at 1079.
26. *Id.*
27. *Id.*

consecutive life sentence and ten years in prison served concurrently with her first life sentence. Hudgen was also sentenced to ten years in prison, suspended with probation to be served consecutively with her second life sentence.[28] Subsequently, Hudgen made a timely conviction appeal.[29]

ANALYSIS AND HOLDING

On appeal, the Court addressed three issues.[30]

A. *Hudgen's Apartment Warrant*

The first issue is whether the trial justice erred in denying Hudgen's motion to suppress the evidence found in her apartment due to the search warrant's alleged lack of particularity and probable cause and the supporting affidavit's alleged misrepresentations and incompleteness.[31] The Court determined that the facts of this case implicated the defendant's constitutional rights since a search warrant must comply with the Fourth Amendment of the United States Constitution *and* Article 1, Section 6 of the Rhode Island Constitution.[32] Warrants that do not abide by those constitutional provisions must be suppressed and cannot be used to convict a person whose constitutional rights have been violated.[33]

The Court split its analysis about whether the trial justice erred in denying the motion to suppress the evidence found in Hudgen's apartment based on her four arguments: (1) the search

28. *Id.*

29. *Id.*

30. *Id.*

31. Generally, when reviewing a motion to suppress a decision, the Court will defer to the trial justice's factual findings and not overturn them "unless they are clearly erroneous." *See id.* (quoting State v. Gonzalez, 254 A.3d 813, 817 (R.I. 2021)). However, when determining whether the defendant's constitutional right has been violated, the Court will independently examine the record *de novo*—or anew. *See id.*

32. Both these federal and state constitutional provisions grant individuals the right to "be free from unreasonable search and seizure of their person, home and possessions." *See id.* Additionally, these provisions prohibit officers from executing searches and seizures "without a warrant issued by a neutral and detached judicial officer." *Id.* at 1079-80. Further, these constitutional provisions require the search warrants to describe the places to be searched and things to be seized with particularity and outline the probable cause to search and seize those particular places or things. *Id.*

33. *See id.* (citing State v. Jeremiah, 696 A.2d 1220, 1220-21 (R.I. 1997)).

warrant did not state the things to be searching for and seized with particularity: (2) probable cause was insufficient to support the warrant; (3) due to the misrepresentations and omissions in the warrant's supporting affidavit, Hudgen was entitled to a *Franks* hearing; and (4) because of the warrant's lack of particularity and the misrepresentations in the supporting affidavit, the trial justice should not have relied on the good-faith exception to the exclusionary rule.[34]

For Hudgen's first argument, the Court found that, under the raise-or-waive rule, Hudgen's waived the issue that the apartment warrant lacked particularity because the issue was not raised before the trial justice.[35] Hudgen countered that the issue should be reviewed, purporting that under the raise-or-waive exception, the Court may review an unraised constitutional issue based on a rule of law novel in the Court's jurisdiction.[36] She urged that her issue of whether merely attaching a supporting affidavit meets a search warrant's particularity requirement satisfied that exception.[37] However, the Court clarified that the exception governed constitutional issues based on a rule of law novel to *counsel*—not the Court—and must be unreasonable for counsel to have known during the trial.[38] The Court found that Hudgen's warrant particularity issue was not based on a novel rule of law, reasoning that the United States Supreme Court addressed this rule of law—fourteen years before Hudgen's trial—in *Groh v. Ramirez*.[39] Consequently, the Court concluded that Hudgen's issue did not satisfy the raise-or-waive exception, and her challenge to the warrant had been waived.[40]

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34. *Id.* at 1080.

35. The raise-or-waive rule prohibits an appellant from bringing forth an objection or new argument on appeal that was not brought before the trial court. *Id.* (citing State v. Sanchez, 206 A.3d 115, 121 (R.I. 2019)).

36. Hudgen also asserted that failure to raise the issue at trial was more than a harmless error because the warrant's lack of particularity infringed on her constitutional right to be free from unreasonable searches and seizures. *Id.*

37. *Id.* at 1081.

38. *Id.*

39. In *Groh*, the Court held that a warrant must describe the particular items to be searched and seized, even if those items' particularity has been outlined in a supporting affidavit. Groh v. Ramirez, 540 U.S. 551, 560 (2004)).

40. *Id.*

For Hudgen's second argument, the Court found sufficient probable cause within the search warrant for Hudgen's apartment.[41] Hudgen asserted that the magistrate judge lacked a solid basis for finding probable cause to search her apartment for weapons because the affidavit did not show the anonymous informant's indicia for "veracity, reliability, or basis of knowledge."[42] Hudgen stressed that the affiant classified the informant as reliable in a conclusory manner and contained the informant's erroneous information about both Cano storing guns at Hudgen's apartment and Cano residing there, along with five to six children.[43]

However, the Court found that based on the totality of the circumstances outlined throughout the *entire* affidavit, there was a substantial basis for the magistrate judge to conclude that searching Hudgen's apartment would produce evidence of Reverdes's murder.[44] The affidavit described shell casings found in front of Hudgen's apartment, testimony that Reverdes lived in that apartment building, shell-casings and a bullet hole found in Reverdes apartment, Reverdes's driver's license containing his old address,[45] and Reverdes's dying declaration that he was shot on the second floor of the apartment.[46] Thus, the Court asserted that the affidavit described facts that pointed to the scene of the homicide and its corresponding evidence to Hudgen's apartment.[47]

Moreover, the affidavit presented reliable information about Hudgen and DaSilva's animus relationship with Reverdes.[48]

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41. *Id.* at 1083. The Court reviews issues of probable cause *de novo*. *See id.* at 1082.

42. *Id.*

43. Hudgen, DaSilva, and DaSilva's three children were the residents of Hudgen's apartment. *Id.*

44. *Id.* at 1083.

45. Reverdes's old apartment had a similar apartment number which could explain Reverdes's number mix-up. Reverdes's old apartment number was 58, and the Court noted that one could reasonably infer that that is why he had recited the shooting location at "58 Harrison Street" rather than 54. *See id.*

46. Reverdes lived on the basement—or the ground floor—of the apartment building, and Hudgen's lived on the floor above him, and thus her apartment could be described as being on the second floor. *See id.*

47. *See id.*

48. Specifically, the affiant described reports to detectives from witnesses and the landlord about Hudgen and DaSilva's previous disputes with Reverdes. *Id.*

Further, while the affidavit did contain inaccuracies about who lived at Hudgen's apartment, the police were able to corroborate that DaSilva did live there with her three children and that Cano was a weekend guest.[49] The Court noted that the anonymous informant's minor inaccuracies about the number of children living at the apartment or Cano's residency status were insufficient to deem the informant entirely unreliable.[50] Thus, because the totality of the circumstances outlined in the affidavit illustrated that the informant was reliable, and the warrant contained facts sufficient to establish probable cause to search Hudgen's apartment, the Court affirmed the trial court's denial of Hudgen's motion to suppress the evidence seized in her apartment.[51]

For Hudgen's third argument, the Court found that the trial justice did not err in denying Hudgen's request for a *Franks* hearing.[52] Hudgen asserted that she was entitled to a hearing about affiant Detective Coie's misrepresentation of his experience and training and the affidavit's omission of Reverdes's statement that he did not know who shot him.[53] The Court restricted their review to the issue of Detective Coie's misrepresentation since Hudgen did not request a *Franks* hearing on the omission of Reverdes's statement at trial.[54] The Court outlined that Hudgen had the burden to prove that Detective Coie intended to misrepresent his experience to mislead the magistrate or made those misrepresentations with reckless disregard for the truth and that there would be no basis for probable cause upon setting those misrepresentations aside.[55]

Hudgen highlighted that Detective Coie's described experience and training were plainly false since he was a new detective with no significant experience in taking part in or leading many investigations.[56] She asserted that considering Detective Coie's novel investigative experience, coupled with the anonymous informant who produced the information tying the defendant's apartment to the

49. *Id.*
50. *Id.* at 1084.
51. *Id.*
52. *Id.* at 1085.
53. *Id.* at 1084.
54. *Id.*
55. *Id.*
56. *Id.*

homicide, severely diminished his reliability.[57] The Court agreed that Detective Coie's misrepresentations surmounted to recklessness that warranted the trial justice's exclusion of his experience and training when determining probable cause.[58] However, based on the deference given to the trial court's *Franks* hearing decisions and the sufficient probable cause beyond Coie's misrepresentations that the Court identified in its earlier apartment warrant analysis, the Court found that the trial court did not err in denying Hudgen's *Franks* hearing request.[59] Since the Court deemed the apartment search warrant valid, it did not consider Hudgen's argument that the trial justice erred in relying on the good-faith exception of the exclusionary rule.[60]

B. *Hudgen's Motion to Suppress Evidence Found in Her Vehicle*

The second issue the Court addressed was whether the trial justice erred in denying Hudgen's motion to suppress the evidence found in her vehicle.[61] Hudgen asserted that the search of her car was unlawful because Hartford police seized her vehicle with neither a warrant nor evidence regarding the Hartford Police Department's standards of practice for vehicle impounding.[62] The Court noted that officers may conduct a temporary warrantless seizure of a vehicle if they have probable cause that the vehicle has evidence of a crime.[63] The Court found that the trial justice did not err upon reasonably inferring that Hartford Police had probable cause based

57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 1078.
62. In *Colorado v. Bertine*, the United States Supreme Court outlined a Fourth Amendment warrant exception, which permitted police to search vehicles "according to standard criteria and [based on] something other than suspicion of evidence of criminal activity." *See id.* (quoting Colorado v. Bertine, 479 U.S. 367, 375 (1987)).
63. The Court found that the record reflected probable cause for Hartford Police to seize Hudgen's vehicle because Hudgen was seen leaving the shooting scene in her vehicle, was found driving that vehicle in Hartford days later, and Detective Silva seized the vehicle's bill of sale—under Hudgen's name—from her apartment. However, Hudgen argued that there was insufficient evidence that Hartford Police were aware of those facts, and thus, they had no probable cause to seize her vehicle. *Id.* at 1085-86.

on the collective-knowledge doctrine.[64] The Court reasoned that this doctrine permitted the officers to use, as a basis for probable cause, the request they received through official channels to safe keep Hudgen's vehicle to protect potential crime evidence it contained.[65] Further, the Court found that the subsequent search of Hudgen's vehicle was not unlawful since Hartford Police Department searched Hudgen's impounded vehicle *after* a Connecticut judge granted them and the Pawtucket Police Department a search warrant.[66] Thus, the Court concluded that the trial justice did not err in denying Hudgen's motion to suppress the evidence gathered from her vehicle because neither the vehicle's warrantless seizure nor subsequent search violated her Fourth Amendment rights.[67]

C. *Confrontation Clause Argument*

The last issue is whether the trial justice violated Hudgen's confrontation rights when sustaining the State's objection during defense counsel's cross-examination of DaSilva.[68] The Court requires defendants to explicitly state their grounds for a Confrontation Clause claim at trial to preserve the issue for appellate review.[69] At trial, Hudgen failed to bring forth a Confrontation Clause argument regarding the sustained objection at issue.[70] Nonetheless, Hudgen asserted that the trial justice knew her confrontation rights were infringed when they intercepted her counsel's apparent attempt to elicit testimony from DaSilva that demonstrated "possible bias, prejudice, or ulterior motive."[71] However, the Court pointed out that Hudgen did not raise *any* argument to admit the line of questioning, and the record did not reflect that Hudgen's attempt to elicit testimony revealing witness bias was

64. Recall that the collective-knowledge doctrine allows officers to rely on information provided through official channels when forming a basis for probable cause. *See id.*

65. *Id.*

66. The Sixth Amendment of the United States Constitution *and* Article 1, section 10, of the Rhode Island Constitution, gives criminal defendants the right to confront witnesses against them by safeguarding their opportunity to cross-examine them. *Id.*

67. *Id.* at 1087.

68. *Id.* at 1078.

69. *Id.* at 1087 (citing State v. Johnson, 251 A.3d 872, 885 (R.I. 2021)).

70. *Id.*

71. *Id.* at 1087.

apparent to the trial judge.[72] Thus, the Court deemed the argument waived since Hudgen failed to raise the Confrontation Clause argument at trial.[73]

COMMENTARY

This case emphasizes the Rhode Island Supreme Court's effort to keep the boundaries of the raise-or-waive rule. Under the raise-or-waive rule, the Supreme Court will not review issues not raised before the trial court in a manner that "alert[s] the trial justice to the question being raised."[74] The Court benefits from this principle because it accomplishes three feats: (1) promotes issue resolution at trial; (2) promotes fairness to the opposing party by allowing them to respond to the claims appropriately; (3) promotes judicial efficiency through limiting the issues reviewed to those adequately raised at trial.[75] When determining whether Hudgen had waived her Confrontation Clause argument, the Court's analysis revealed its want for a defendant to raise the issue to avoid preclusion from appellate review *explicitly*. Specifically, the Court deemed Hudgen's Confrontation Clause argument waived because neither the trial record nor Hudgen's defense counsel indicated *any* attempt to put the trial justice on notice of the issue.[76] The Court wanted a clear showing that the trial justice was alert to Hudgen's argument.[77] It thus was unreceptive to her overstretched inference that the trial justice was *possibly* aware of the Confrontation Clause issue.[78] Accordingly, Hudgen's blatant silence toward the issue at trial doomed the issue to appellate review preclusion.

Moreover, the Court kept the boundaries of one of the raise-or-waive rule's exceptions. Hudgen mischaracterized the raise-or-waive rule exception, stating that the exception allowed the Court to review constitutional issues unraised at trial based on a rule of

72. *Id.* at 1088.
73. *Id.*
74. *Id.* at 1087.
75. Nicholas Nybo, P*reserving Justice: A Discussion of Rhode Island's "Raise or Waive" Doctrine*, 20 ROGER WILLIAMS U. L. REV. 375 (2015) (quoting State v. Burke, 522 A.2d 725, 731 (R.I. 1987)).
76. *Hudgen*, 272 A.3d at 1087.
77. *Id.*
78. *Id.*

law novel to the Court's jurisdiction.[79] If the Court accepted Hudgen's interpretation of this raise-or-waive exception, it would have opened up the floodgates for defendants to cure their failure to raise a constitutional argument at trial by asserting that the argument is based on a legal issue of first impression to the Court. While it is not unfounded for a defendant to attempt to recite a rule in a manner favorable to them, Hudgen bent the raise-or-waive rule exception to the point of blatant inaccuracy in a last-ditch effort to get her search warrant argument reviewed. Accordingly, the Court rejected her interpretation, clarifying the exception as requiring an issue "of constitutional dimension based on a novel rule of law is presented of which counsel could not reasonably have known during . . . the trial."[80] As noted, the raise-or-waive rule protects the Court from reviewing issues raised anew upon appellate review. Thus, the Court strictly adhered to the text of the rule's exception to retain its narrowness and prevent defendants from using it as a back door to subvert the rule, as Hudgen has attempted.

CONCLUSION

The Rhode Island Supreme Court affirmed the trial justice's decision to deny Hudgen's three motions to suppress evidence and declined review on one of Hudgen's two *Frank* hearing arguments and her Confrontation Clause violation claim based on her failure to raise these arguments at trial. Accordingly, the Court affirmed the Superior Court's conviction and remanded the record back to the lower court.[81]

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79. *Id.* at 1080.
80. *Id.* at 1080-81 (citing State v. Gomes, 690 A.2d 310, 319 (R.I. 1997)).
81. *Id.* at 1088.