Decided and Entered: January 20, 2022   110671
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THE PEOPLE OF THE STATE OF
    NEW YORK,
                        Respondent,
        v   MEMORANDUM AND ORDER

NAHMEL STRATTON,
                        Appellant.
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Calendar Date: December 15, 2021

Before: Egan Jr, J.P., Clark, Pritzker and Colangelo, JJ.

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        Hug Law, PLLC, Albany (Matthew C. Hug of counsel), for
appellant.

        P. David Soares, District Attorney, Albany (Vincent Stark
of counsel), for respondent.

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Clark, J.

        Appeal from a judgment of the County Court of Albany
County (Lynch, J.), rendered March 22, 2018, convicting
defendant upon his plea of guilty of the crime of criminal
possession of a weapon in the second degree.

        In May 2017, defendant was charged with criminal
possession of a weapon in the second degree for possessing a
loaded firearm in the area of Johnnie's Bar in the City of
Albany. Following <u>Darden</u> and <u>Dunaway/Mapp</u> hearings, County
Court denied defendant's motion to suppress the loaded firearm.
In January 2018, defendant entered into a negotiated plea

agreement and pleaded guilty to the charge with the
understanding that he would waive his right to appeal and be
sentenced to a prison term of seven years with five years of
postrelease supervision. He also signed a written waiver of his
right to appeal during the plea proceedings. At sentencing,
defendant asked the court to instead sentence him to a prison
term of eight years and allow him the right to appeal the
court's suppression decision. County Court denied his request,
and defendant was sentenced in accord with the negotiated plea
agreement. Defendant appeals.

Defendant argues that his waiver of the right to appeal
was overly broad and, thus, not knowing, voluntary and
intelligent. We agree. We have found this exact written
waiver, utilized by the Albany County District Attorney's
office, to be overly broad (see People v Robinson, 195 AD3d
1235, 1236 [2021]; People v Downs, 194 AD3d 1118, 1118-1119
[2021], lv denied 37 NY3d 971 [2021]), and County Court's
colloquy did not cure its defects (see People v Winters, 196
AD3d 847, 848-849 [2021], lvs denied 37 NY3d 1025, 1030 [2021];
People v Figueroa, 192 AD3d 1269, 1270 [2021]). Thus,
defendant's waiver of the right to appeal is unenforceable, and
we will therefore decide the suppression issues relative to the
loaded firearm.

The facts at the Darden and Dunaway/Mapp hearings
establish that, in the early hours of April 28, 2017, Scott
Gavigan, an investigator with the City of Albany Police
Department, received a telephone call from a confidential
informant (hereinafter CI) telling him, as it was happening,
that an individual known as Mel had placed a handgun in his
waistband outside of a bar on Central Avenue in Albany, gotten
into a black Durango SUV with four or five other black males and
was heading to Johnnie's Bar on Broadway in Albany. The CI
relayed the vehicle's license plate number and indicated that it
had Texas plates. As Gavigan was off duty, he called the
dispatcher for the police department and relayed the information
that he had received from the CI. Shane Merritt, an Albany
police officer, testified that, shortly after information
concerning the vehicle was dispatched, he contacted the

dispatcher and asked if the vehicle had New York or Texas plates
as he and his partner had just seen a vehicle with the latter
otherwise matching the dispatch description. As Merritt and his
partner arrived at Johnnie's Bar, the dispatcher clarified that
the vehicle was reported to have Texas plates, indicating that
he had previously mistakenly noted that the vehicle had New York
plates. They then saw the same vehicle with the Texas plates
attempting to park as one of its occupants was jumping out of
the vehicle. Merritt and his partner ran up to the vehicle, and
Merritt told the occupants to remain inside and place their
hands on the dashboard or headrest in front of them. The driver
of the vehicle was then removed from the vehicle by Merritt. At
that time, another officer, Neil Mullarkey, arrived on the scene
and assisted by removing defendant from the rear driver side of
the vehicle. Mullarkey testified that, as he was about to pat
down defendant, defendant tried to run away, but Mullarkey and
another officer were able to stop him. As the officers were
bringing defendant to the ground, they heard what sounded like a
heavy metal object hit the ground, and Merritt then saw a
handgun on the ground. Defendant was accordingly arrested and
taken into custody, and the firearm was recovered and found to
be loaded.

Defendant maintains that the loaded firearm should be
suppressed as the police did not have probable cause for an
arrest and did not have reasonable suspicion that criminal
activity was afoot when they effectuated the subject traffic
stop based upon the information provided by the CI. "The People
may establish probable cause for a warrantless arrest based upon
hearsay information supplied by an informant provided both the
veracity and basis of knowledge requirements of the Aguilar-
Spinelli test have been met" (People v Smalls, 271 AD2d 754,
754-755 [2000] [internal citations omitted], lv denied 95 NY2d
804 [2000]; see People v Griminger, 71 NY2d 635, 638-639 [1988];
People v Pettigrew, 161 AD3d 1306, 1307 [2018], lv denied 32
NY3d 940 [2018]). According deference to County Court's
credibility determinations, the basis of the CI's firsthand
knowledge of the events was clearly established during the
confidential Darden hearing (see People v Jackson, 189 AD3d
1705, 1706 [2020], lv denied 36 NY3d 1098 [2021]), as well as

through the testimony of Gavigan at the Dunaway/Mapp hearing
(see People v Rodriguez, 195 AD3d 1237, 1239-1240 [2021], lv
denied 37 NY3d 1061 [2021]). The People showed that the CI had
a "reliable track record" of assisting the police over the
course of the 10 years prior to the hearings (People v Mondolfi,
221 AD2d 726, 726 [1995] [internal quotation marks and citation
omitted], lv denied 88 NY2d 882 [1996]). As to the veracity of
the CI's information, Merritt's testimony showed that defendant
was in the exact vehicle described by the CI at the location
indicated by the CI. The police therefore had reasonable
suspicion for the traffic stop and probable cause for
defendant's arrest, and, accordingly, his motion to suppress the
loaded firearm was properly denied (see People v Rodriguez, 195
AD3d at 1239-1240; People v Jackson, 189 AD3d at 1706; People v
Zirpola, 171 AD3d 1245, 1246-1247 [2019], lv denied 34 NY3d 1164
[2020]; People v Clark, 153 AD3d 1093, 1094-1095 [2017], lv
denied 30 NY3d 979 [2017]; People v Cook, 134 AD3d 1241, 1243-
1244 [2015], lv denied 26 NY3d 1143 [2016]; People v Portelli,
116 AD3d 1163, 1164 [2014]).

          Defendant next contends that he was not afforded
meaningful representation under both the Federal and State
Constitutions. However, defendant's claim of ineffective
assistance of counsel is unpreserved as he did not make an
appropriate postallocution motion (see People v Hines, ___ AD3d
___, ___, 2021 NY Slip Op 06886, *2 [2021]; People v Nack, ___
AD3d ___, ___, 2021 NY Slip Op 06882, *2 [2021]; People v
Greene, 171 AD3d 1407, 1408 [2019]). "Further, defendant did
not make any statements during the plea colloquy or at
sentencing that cast doubt upon his guilt or otherwise called
into question the voluntariness of his plea so as to trigger the
narrow exception to the preservation requirement" (People v
Stebbins, 171 AD3d 1395, 1397 [2019] [citations omitted], lv
denied 33 NY3d 1108 [2019]; see People v Pastor, 28 NY3d 1089,
1090 [2016]; People v Lopez, 71 NY2d 662, 665-666 [1988]). In
any event, defendant received a favorable plea agreement, and
defense counsel's decision not to subpoena certain cell phone
records cannot be said to have been without strategy (see People
v Benevento, 91 NY2d 708, 713 [1998]; People v Pace, 192 AD3d

1274, 1275 [2021], lv denied 37 NY3d 973 [2021]; People v Perry, 148 AD3d 1224, 1225-1226 [2017]).

Egan Jr., J.P., Pritzker and Colangelo, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:

Robert D. Mayberger
Clerk of the Court