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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0422-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KHALID A. TURNER,

Defendant-Appellant.

Submitted February 6, 2017 – Decided March 1, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
14-08-1040.

Joseph Krakora, Public Defender, attorney for
appellant (Daniel V. Gautieri, Assistant
Deputy Public Defender, of counsel and on the
brief).

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Following the denial of his suppression motion, defendant
pled guilty to third-degree possession with intent to distribute

a controlled dangerous substance (CDS), crack cocaine, within 1000 feet of school property. The court sentenced him to an extended custodial term. On appeal, he argues:

POINT I

THE POLICE LACKED SUFFICIENT BASIS TO STOP TURNER AND TO ORDER HIM TO RAISE HIS HANDS IN THE AIR. DETECTIVE SZBANZ'S CLAIM THAT HE COULD SEE A SMALL OBJECT INSIDE TURNER'S COAT POCKET WAS INCREDIBLE.

POINT II

THE SIX-YEAR SENTENCE FOR POSSESSION OF NARCOTICS WITH THE INTENT TO DISTRIBUTE IN A SCHOOL ZONE IS ILLEGAL BECAUSE THE STATE FAILED TO SEEK AN EXTENDED TERM AND THE JUDGE NEVER STATED THAT HE WAS IMPOSING SUCH A TERM.

We affirm.

A Mercer County grand jury returned an indictment charging defendant with four CDS offenses, including third-degree possession with intent to distribute a CDS within 1000 feet of school property, N.J.S.A. 2C:35-7. Following the indictment, defendant filed a motion to suppress the crack cocaine police seized from his coat pocket during a street encounter. The trial court denied the motion. Defendant later accepted a plea offer from the State and agreed to plead guilty to the third-degree CDS school zone offense. In exchange, the State agreed to dismiss the remaining charges and recommend a six-year custodial term with thirty-three months of parole ineligibility, the sentence to be

served concurrently to that imposed for a parole violation. The court subsequently sentenced defendant in accordance with the plea agreement and imposed appropriate penalties and assessments. Defendant appealed.

On appeal, defendant first challenges the denial of his suppression motion. He argues the State failed to establish the investigatory stop was valid. Alternatively, he argues that if the search was justified, "the detective failed to properly limit the stop to what was reasonably necessary to verify or dispel his suspicions as quickly as possible." Defendant asserts the detective who stopped him "was not permitted to require [defendant] to keep his hands in the air so that [he] could get a look inside [defendant's] coat pocket." Lastly, defendant claims the detective's testimony that he could see into defendant's pocket was not credible.

The State presented a single witness at the suppression hearing, Detective Stephen Szbanz, who had worked for the Trenton Police Department for ten years. On March 31, 2014, he was in uniform, riding in an unmarked police car driven by Detective Stew Owens. At 7:16 p.m., the detectives were patrolling in the area of St. Joe's and Girard Avenues in Trenton. The residential neighborhood was a high crime area with "a lot" of narcotics and weapons activity. Detective Szbanz had patrolled this area for

approximately nine of his ten years as a law enforcement officer and had been involved in approximately sixty to seventy narcotics-related investigations or arrests there.

When the detectives turned from St. Joe's Avenue onto Girard Avenue, Detective Szbanz spotted defendant and another person standing on the corner. "They were closely huddled together," staring at an object in defendant's right hand, which was "extended slightly." The two were talking. According to Detective Szbanz, as the car turned, defendant "picked up his head, observed [the detectives'] presence and forcefully shoved the object in his coat pocket." Detective Szbanz testified defendant "looked right at [him]," and the detective "could tell [defendant] was somewhat startled." After defendant put the object into his right front coat pocket, he and the other person "split in opposite directions." Based on his training, experience, and years on the street, Detective Szbanz believed he had witnessed the beginning of a narcotics transaction.

The detectives stopped defendant in the middle of the intersection. They exited the car and approached defendant. Detective Szbanz ordered defendant to "show us your hands and he put his hands up." Defendant was wearing a black coat and the front had four pockets, "big cargo pockets which are . . . like a cargo sort that extends." Detective Szbanz was standing within

inches of defendant and was able to peer into defendant's coat pocket. The detective observed "a small, clear, Ziploc bag containing an off-white rock-like substance." He "immediately knew what it was" and arrested defendant.

On cross-examination, Detective Szbanz conceded that when he first saw the object in defendant's hand he could describe it only as "a small object" due to the distance from which he observed it and its small size. The detective did not see the other person holding money. In fact, Detective Szbanz conceded he did not witness any exchange take place between the individuals.

The motion judge found Detective Szbanz's testimony credible. Based on the totality of the circumstances, and acknowledging the inferences Detective Szbanz could have drawn based on his training and experience, the judge concluded the detective had a reasonable, articulable, and particularized suspicion that defendant was about to engage in a drug transaction and denied defendant's motion.

When we review an order denying a suppression motion, we review the factual findings of the trial court with deference. State v. Scriven, 226 N.J. 20, 32 (2016). That is particularly so as "to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Johnson, 42 N.J. 146, 161 (1964). If we are

satisfied that the trial court's findings "could reasonably have been reached on sufficient credible evidence present in the record [our] task is complete and [we] should not disturb the result." Id. at 162. Our review of the trial court's legal conclusions is plenary. State v. Rockford, 213 N.J. 424, 440 (2013).

In this case, the detectives conducted an investigatory stop. "[A]n investigatory stop, sometimes referred to as a Terry¹ stop, is valid 'if it is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" State v. Pineiro, 181 N.J. 13, 20 (2004) (quoting State v. Nishina, 175 N.J. 502, 510-11 (2003) (citation omitted)). The suspicion necessary to conduct a lawful Terry stop "need not rise to the probable cause necessary to justify an arrest." Ibid. (citation omitted). However, "[u]nless the totality of the circumstances satisfies the reasonable and articulable suspicion standard, the investigatory stop 'is an unlawful seizure, and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule.'" State v. Mann, 203 N.J. 328, 339 (2010) (quoting State v. Elders, 192 N.J. 224, 247 (2007)).

¹ Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

Whether a reasonable and articulable suspicion exists depends upon the totality of the circumstances. Pineiro, supra, 181 N.J. at 22. In determining the issue, a court must consider whether the "historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion." State v. Stovall, 170 N.J. 346, 357 (2002) (quoting Ornelas v. United States, 517 U.S. 690, 696, 116 S. Ct. 1657, 1661-62, 134 L. Ed. 2d 911, 919 (1996)). A court may also consider an officer's experience and knowledge in applying the totality of the circumstances test. Id. at 361. "[D]ue weight [is] given . . . to the specific reasonable inferences which [an officer] is entitled to draw from the facts in light of his [or her] experience." Terry, supra, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909.

We affirm the denial of defendant's suppression motion, substantially for the reasons given by the motion judge in the cogent and comprehensive oral opinion she delivered from the bench on May 12, 2015. We add this. In arguing that the judge erred by denying his suppression motion, defendant points to several observations made by Detective Szbanz and argues that each, viewed in isolation, is not necessarily indicative of criminal activity. The judge, however, was required to view the circumstances in their totality to determine if the inferences drawn by the

detective were reasonable in light of his experience. In arguing the motion judge erred, defendant overlooks the detective's experience.

Defendant also argues Detective Szbanz's testimony about his observations of the substance in defendant's coat pocket was not credible. The judge found to the contrary, and our standard of review requires we defer to credibility determinations reasonably reached when sufficient, credible evidence is present in the record. Johnson, supra, 42 N.J. at 161.

Defendant also argues his sentence is excessive. The court sentenced defendant to an extended six-year term for third-degree possession with intent to distribute a CDS in a school zone. A defendant sentenced for such an offense, "who has been previously convicted of manufacturing, distributing, dispensing or possessing with intent to distribute a [CDS] or controlled substance analog, shall upon application of the prosecuting attorney be sentenced by the court to an extended term[.]" N.J.S.A. 2C:43-6(f) (emphasis added). Defendant does not dispute he was extended-term eligible; rather, he bases his argument on the N.J.S.A. 2C:43-6(f) requirement that the prosecuting attorney make an application for the extended-term sentence.

Rule 3:21-4(e) provides in pertinent part:

Where the defendant is pleading guilty pursuant to a negotiated disposition, the prosecutor shall make the motion at or prior to the plea. If the negotiated disposition includes the recommendation of an extended term, the prosecutor's oral notice and the recordation of the extended term exposure in the plea form completed by defendant and reviewed on the record shall serve as the State's motion.

Defendant argues the prosecutor never mentioned she was seeking the imposition of an extended-term sentence at either the plea or sentencing hearings. Defendant also argues the court did not mention an extended term when it discussed the consequences of the guilty plea. Lastly, defendant argues the guilty plea form concerning the extended-term sentence was confusing because he first checked the "yes" box but then crossed it out and checked the "no" box in response to whether he entered a plea to charges requiring a mandatory period of parole ineligibility or a mandatory extended-term sentence recommended by the State. The plea form, however, did specify defendant's sentence as six years with thirty-three months mandatory parole ineligibility.

Here, the "negotiated disposition" included the prosecutor's oral notice that she would recommend a six-year sentence with thirty-three months of mandatory parole ineligibility, and the plea form that defendant acknowledged signing and understanding recorded the specified sentence as six years with the thirty-three

year parole ineligibility term. Moreover, defense counsel represented he had reviewed the terms of the plea agreement with defendant, and defendant acknowledged his attorney had reviewed the plea form with him and had answered all his questions. Under these circumstances, we conclude the requirements of Rule 3:21-4(e) were satisfied.

That said, the better practice would have been for the prosecutor to state explicitly she was seeking an extended term and recommending an extended-term sentence, and the court to ask defendant whether he understood the nature and consequences of an extended-term sentence. Nonetheless, the record demonstrates the minimum requirements of the rule have been met.

For the foregoing reasons, we affirm defendant's judgment of conviction in its entirety.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION