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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-5302-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HARRY DUPREY, JR.,

Defendant-Appellant.

Submitted April 24, 2017 – Decided May 2, 2017

Before Judges Nugent and Haas.

On appeal from Superior court of New Jersey,
Law Division, Hudson County, Indictment No.
14-06-0071.

Joseph E. Krakora, Public Defender, attorney
for appellant (Rochelle Watson, Assistant
Deputy Public Defender, of counsel and on the
brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Frank Muroski, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

After the trial judge denied his motion to suppress 1064
grams of cocaine found in a backpack that was in defendant Harry

Duprey, Jr.'s possession, defendant entered an "open plea"¹ to second-degree conspiracy to possess cocaine with intent to distribute it, N.J.S.A. 2C:5-2, N.J.S.A. 2C:35-5(a)(1), and N.J.S.A. 2C:35-5(b)(1) (count one); first-degree possession of cocaine with intent to distribute it, N.J.S.A. 2C:2-6, N.J.S.A. 2C:35-5(a), and N.J.S.A. 2C:35-5b(1) (count two); and third-degree possession of cocaine, N.J.S.A. 2C:2-6 and N.J.S.A. 2C:35-10(a)(1) (count three). The trial judge merged counts one and three into count two, and sentenced defendant to ten years in prison, with a thirty-nine-month period of parole ineligibility. The judge also assessed appropriate fines and penalties.

On appeal, defendant raises the following contention:

AFTER OBSERVING A SERIES OF WHOLLY INNOCUOUS BEHAVIOR OVER THE SPAN OF NINE HOURS OF SURVEILLANCE, THE POLICE LACKED REASONABLE SUSPICION TO STOP DEFENDANT'S CAR.

After reviewing the record in light of the contentions advanced on appeal, we affirm.

We derive the following facts from the evidentiary hearing conducted by the trial judge. Detective Robert Runski, a thirteen-

¹ "An 'open plea' [is] one that d[oes] not include a recommendation from the State nor a prior indication from the court, regarding sentence." State v. Ashley, 443 N.J. Super. 10, 22 (App. Div. 2015) (alterations in original) (emphasis omitted) (quoting State v. Kates, 426 N.J. Super. 32, 42 n.4 (App. Div. 2012) aff'd, 216 N.J. 393 (2014)), certif. denied, 224 N.J. 526 (2016).

year veteran of the New Jersey State Police ("NJSP"), testified that he had worked in the NJSP's drug trafficking unit since 2009. During that time, he participated in approximately 250 to 300 narcotics investigations.

At approximately 7:00 a.m. on July 15, 2013, Detective Runski conducted "a corporate outreach check" by calling a local hotel seeking any reports of suspicious activity. A confidential source at the hotel, who Detective Runski knew from prior matters, told the detective that a man, who the source identified as Andres Ramirez, had checked into Room 207 at 3:00 a.m. that morning without a reservation and only wanted the room until 11:00 a.m. the same day. This aroused the detective's suspicion because, in his experience, drug traffickers often "check into hotels without reservations for short stays, or don't know how long they were going to stay." The source also reported that Ramirez stated he was from Brandon, Florida, which Detective Runski testified was a "source area" for drugs that were later sold in New Jersey.

Detective Runski next conducted "database inquiries" and learned that Ramirez "was a subject of an ICE, a [United States Department of] Homeland Security [{"DHS"}] investigation[.]" Detective Runski then contacted a DHS special agent, who told him that Ramirez was suspected of being involved with a Colombian drug-trafficking organization, which trafficked drugs from

Colombia to New Jersey. The agent reported that the DHS had placed a "lookout" on Ramirez just four days earlier, which directed law enforcement agencies that encountered Ramirez to contact the DHS. The agent also stated that Ramirez was known to travel with his family while involved in drug trafficking.

At around 7:30 a.m., Detective Runski went to the hotel. At 9:00 a.m., he was joined by at least eight other officers and they set up a surveillance operation. Later that day, several DHS agents joined the group.

At approximately 3:30 a.m., Ramirez returned to the hotel, after apparently extending his stay. Ramirez was in a Nissan Armada that was driven by a man, who was later identified as Emilio Vega. Defendant was a passenger in the car. Ramirez got out of the car and went into the lobby, where he gave his wife and child a bag of "fast food." Ramirez then got back into the car, and Vega drove it into the town. Detective Runski and a number of other officers followed in separate vehicles.

After driving for about thirty-five minutes, Vega parked the car in front of "a head shop." Detective Runski testified that, as Vega was driving toward the shop, he circled around city blocks on the way to his destination. When Vega finally got to the block where the shop was located, he drove past it, circled that block once, and then parked directly in front of the store. Detective

Runski testified that in his experience, Vega was using "counter-surveillance" techniques by driving in circles in order to detect if he was being followed.² This further raised the detective's suspicion that the three men in the car were "involved in criminal activity[.]"

Defendant, Ramirez, and Vega got out of the car and went into the head shop, where they stayed for about twenty minutes. They then returned to the vehicle, and Vega drove them to the hotel. Once there, Vega got out of the car carrying a black backpack. Defendant followed Vega into the hotel lobby. Ramirez stayed in the car. Ramirez's wife and child then came out of the hotel, got in the car with Ramirez, and the car drove away. Neither defendant nor Vega interacted with Ramirez's family, which Detective Runski believed was odd if they were supposed to be staying at the hotel together.

The surveillance team observed that defendant and Vega went into Ramirez's hotel room and stayed there for twenty minutes. When they left the room, defendant was now carrying the black backpack. Just as defendant and Vega were walking into the parking

² Detective Runski acknowledged that parking spaces were sometimes difficult to find in the area where the shop was located, but that was not the case on the day of the surveillance. Indeed, the detective was able to park right across the street from the shop after Vega parked directly in front of it.

lot, Ramirez returned to the hotel and parked. Vega and defendant initially walked away from the car as Ramirez's wife and child got out. Again, the two men did not interact with Ramirez's family and, to Detective Ramirez, "[i]t looked as if they wanted to avoid them."

After Ramirez's wife and child entered the hotel, defendant and Vega went to the car. Ramirez moved over to the front passenger seat, and Vega got in the driver's seat. Defendant, who was still carrying the backpack, got into the back seat of the car. Vega then drove out of the parking lot.

Based on his training and experience, Detective Ramirez believed defendant and Vega had engaged in a drug transaction while they were in Ramirez's hotel room. The detective stated that the transfer of the backpack from Vega to defendant, the suspects' interactions with each other, the fact that Ramirez and his family left and then returned to the hotel at the same time defendant and Vega came out of the hotel room, and defendant's and Vega's avoidance of Ramirez's wife supported his suspicion. The detective also factored in the information the DHS special agent had provided concerning Ramirez's involvement in international drug trafficking and the DHS's decision to place Ramirez on a "lookout" alert just four days previously.

After Vega pulled onto a main road, two unmarked police cars pulled him over. The police ordered all three men to get out the car and they then separated the suspects.

Detective Runski told Ramirez that he was conducting a narcotics investigation. Ramirez stated that he had rented the car in Florida on July 11, which coincided with the date when the DHS placed its "lookout" alert on Ramirez. Ramirez claimed he was in New Jersey to visit defendant, who he described as a friend. However, Ramirez stated he did not know where defendant lived. Ramirez asserted he was also friends with Vega through defendant, but "[h]e didn't know much about him."

Detective Runski asked Ramirez if he would consent to a search of the car, and Ramirez agreed. Ramirez executed a consent to search form that Detective Runski explained to him. The police removed the black backpack from the back seat and placed it near the car.

When Detective Runski asked Ramirez if everything in the car belonged to him, Ramirez replied that he owned everything except the backpack. When asked if he owned the backpack, Vega replied that it belonged to defendant. At first, defendant told Detective Runski that "[i]f they're saying it's mine, it must be mine[.]" However, after the detective asked defendant if he would consent

to a search of the backpack, defendant alleged that it was not his and, therefore, he could not let the police search it.

By that time, a "narcotics K-9" unit had arrived at the scene and a drug-detection dog "provided a positive alert" after sniffing the backpack. The police then secured the backpack in a police car and applied for a search warrant. After the warrant was obtained, the officers opened the backpack and found 1064 grams of cocaine in plastic bags, some glass vials with powder in them, and some empty glass vials.³

Defendant did not testify at the evidentiary hearing and did not call any witnesses.

At the conclusion of the hearing, the trial judge denied defendant's motion to suppress the contents of the backpack. In a written decision, the judge found that Detective Runski's account of the surveillance, the investigatory stop, and the search of the backpack was credible. The judge further found that the police properly stopped the suspects' car after Detective Runski's and the other officers' observations created a reasonable and particularized suspicion that the three men were engaging in a drug transaction. This appeal followed.

³ Defendant, Ramirez, and Vega were each charged with second-degree conspiracy to possess cocaine with intent to distribute it; first-degree possession of cocaine with intent to distribute it; and possession of cocaine.

On appeal, defendant argues that the trial judge erred in finding that the automobile stop was permissible. We disagree.

Our review of a trial judge's decision on a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). In reviewing a motion to suppress evidence, we must uphold the judge's factual findings, "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quoting Robinson, supra, 200 N.J. at 15). Additionally, we defer to a trial judge's findings that are "substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Ibid. (alteration in original) (quoting Robinson, supra, 200 N.J. at 15). We do not, however, defer to a trial judge's legal conclusions, which we review de novo. Ibid.

It is well settled that the police may lawfully stop a motor vehicle and detain the motorists on less than probable cause in order to investigate suspicious conduct. State v. Stovall, 170 N.J. 346, 356 (2002). Such an "investigatory stop," also known as a Terry stop, is characterized by a detention in which the person approached by a police officer would not reasonably feel free to leave, even though the encounter falls short of a formal

arrest. Id. at 355-56; see also Terry v. Ohio, 392 U.S. 1, 19, 88 S. Ct. 1868, 1878-79, 20 L. Ed. 2d 889, 904 (1968).

During a Terry motor vehicle stop, a police officer may detain individuals for a brief period, if the stop was "based on reasonable and particularized suspicion that an offense . . . has been or is being committed." State v. Bacome, ___ N.J. ___ (2017) (slip op. at 18) (quoting State v. Carty, 170 N.J. 632, 639-40 (2002)). Whether a reasonable and articulable suspicion exists depends upon the totality of the circumstances. State v. Pineiro, 181 N.J. 13, 22 (2004).

In evaluating the totality of the circumstances surrounding the Terry stop, a reviewing court must balance "the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions." State v. Davis, 104 N.J. 490, 504 (1986). As the Supreme Court observed in Davis,

such encounters are justified only if the evidence, when interpreted in an objectively reasonable manner, shows that the encounter was preceded by activity that would lead a reasonable police officer to have an articulable suspicion that criminal activity had occurred or would shortly occur. No mathematical formula exists for deciding whether the totality of circumstances provided the officer with an articulable or particularized suspicion that the individual in question was involved in criminal activity. Such a determination can be made only through

a sensitive appraisal of the circumstances in each case.

[Davis, supra, 104 N.J. at 505.]

In reviewing the "totality of the circumstances," we are also required to "give weight to 'the officer's knowledge and experience' as well as 'rational inferences that could be drawn from the facts objectively and reasonably viewed in light of the officer's expertise.'" State v. Citarella, 154 N.J. 272, 279 (1998) (quoting State v. Arthur, 149 N.J. 1, 10-11 (1997)). "The fact that purely innocent connotations can be ascribed to a person's actions does not mean that an officer cannot base a finding of reasonable suspicion on those actions as long as 'a reasonable person would find the actions are consistent with guilt.'" Id. at 279-80 (quoting Arthur, supra, 149 N.J. at 11).

Applying these principles, we discern no basis for disturbing the trial judge's reasoned decision to deny defendant's motion to suppress the large amount of cocaine found in the black backpack. Contrary to defendant's contention, the totality of all of the circumstances presented to Detective Runski, viewed through the prism of his lengthy experience in conducting drug trafficking investigations, clearly provided him with a constitutionally permissible reasonable suspicion that defendant was engaging in a drug transaction with his two codefendants.

Here, Ramirez checked into the hotel at 3:00 a.m. without a reservation for an 11:00 a.m. check out time the same day, after driving to New Jersey from a "source city" for narcotics in Florida. The DHS placed Ramirez on its "lookout" alert list just four days earlier, which matched the date when Ramirez left Florida for New Jersey. The DHS agent also told Detective Runski that Ramirez was a known drug trafficker who was running drugs between Colombia and New Jersey and that he was known to travel with his family when engaging in this criminal activity.

When Ramirez, defendant, and Vega left the hotel in Ramirez's car to go to the head shop, Vega used "counter-surveillance" driving techniques to attempt to learn whether the car was being followed. When the men returned to the hotel, Vega was now carrying a black backpack. Vega and defendant went into Ramirez's hotel room without interacting with Ramirez's wife or child, while Ramirez left in the car with his family for only twenty minutes. According to Detective Runski, this gave defendant and Vega enough time alone in the hotel room to retrieve whatever was there and complete the transaction.

Detective Runski believed that some type of transaction had occurred in the hotel room because, when the two men left the room, defendant was now carrying the backpack. The moment defendant and Vega got to the parking lot, Ramirez pulled up.

Defendant and Vega then walked away from the car, rather than toward it, which the detective believed was an attempt to again avoid Ramirez's family.

We are satisfied, as was the trial judge, that the full mosaic of these circumstances gave Detective Runski the "reasonable and particularized suspicion that an offense . . . has been or is being committed" necessary to effectuate a motor vehicle Terry stop. Bacome, supra, (slip op. at 18). Because the brief investigatory stop was permissible, the subsequent seizure of the backpack and its search pursuant to a warrant were plainly constitutional.

Defendant also argues that the police should not have ordered him to get out of the car because Vega was driving and defendant was merely a passenger. This argument lacks merit.

As the Supreme Court recently reiterated in Bacome, when the police stop a car because the driver has committed a traffic violation, they may not order a passenger to get out of the car unless the circumstances "present reason for heightened caution." Id. at 17. Here, however, the police did not conduct a mere traffic stop. Instead, the police stopped the car to conduct an investigation of a possible drug transaction involving all three occupants. Thus, it was permissible for the police to remove defendant and his two codefendants from the vehicle. State v.

Matthews, 330 N.J. Super. 1, 5 (App. Div. 2000) (noting that "when the passenger has . . . engaged in culpable conduct[,]" a police officer may order the passenger to get out of the vehicle).

Affirmed.

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



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