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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
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-1727-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RYAN H. GABOFF,

Defendant-Appellant.

Submitted February 13, 2018 – Decided February 28, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
15-11-1341.

Helmer, Conley, & Kasselmann, PA, attorneys for
appellant (Patricia B. Quelch, of counsel and
on the briefs).

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Patrick F. Galdieri,
II, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

After pleading guilty, defendant appeals from his conviction for third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1). We affirm.

On appeal, defendant argues:

THE TRIAL COURT ERRED BY DENYING DEFENDANT'S
MOTION TO SUPPRESS.

"When reviewing a trial court's decision to grant or deny a suppression motion, [we] 'must defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record.'" State v. Dunbar, 229 N.J. 521, 538 (2017) (quoting State v. Hubbard, 222 N.J. 249, 262 (2015)). "We will set aside a trial court's findings of fact only when such findings 'are clearly mistaken.'" Ibid. (quoting Hubbard, 222 N.J. at 262). "We accord no deference, however, to a trial court's interpretation of law, which we review de novo." Ibid. Applying these standards, we see no error.

Defendant concedes that the traffic stop was lawful. According to defendant, the officer should have issued a ticket for speeding and use of a cell phone. After that, defendant submits the officer should have permitted him to leave the scene of the traffic stop. Defendant maintains that the officer prolonged the investigatory stop, which he contends transformed it into an illegal detention.

Both the federal and State constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. An investigatory stop, sometimes referred to as a Terry¹ stop, implicates constitutional requirements and must be based on "specific and articulable facts which, taken together with rational inferences from those facts," provide a "reasonable suspicion of criminal activity." State v. Elders, 192 N.J. 224, 247 (2007) (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). "Because an investigative detention is a temporary seizure that restricts a person's movement, it must be based on an officer's 'reasonable and particularized suspicion . . . that an individual has just engaged in, or was about to engage in, criminal activity.'" State v. Rosario, 229 N.J. 263, 272 (2017) (alteration in original) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). The officer's "articulable reasons" or "particularized suspicion" must be based on the officer's assessment of the totality of the circumstances. State v. Davis, 104 N.J. 490, 504 (1986).

In addition to the unsafe driving, delay in pulling over, and the inability to identify from where defendant had been coming, the officer, who the judge found credible, observed immediately

¹ Terry v. Ohio, 392 U.S. 1 (1968).

that defendant's hands were shaking, and that he had pinpoint pupils and a dry mouth. The pinpoint pupils and dry mouth led the officer to believe, based on his extensive training and experience, defendant had been using narcotics. After defendant exited his vehicle, he appeared nervous, provided a nonsensical explanation for why his pants pocket had been turned inside out, and spontaneously stated that he had not changed his contact lenses recently. The officer confirmed his suspicion that defendant was under the influence of narcotics by shining a light in defendant's eyes and observing his pupils stayed pinpoint and motionless.

An investigative stop may become "a de facto arrest when 'the officers' conduct is more intrusive than necessary for an investigative stop.'" State v. Dickey, 152 N.J. 468, 478 (1998) (quoting United States v. Jones, 759 F.2d 633, 636 (8th Cir. 1985)). Although there is no bright-line test to determine when an investigative stop becomes a de facto arrest, courts have identified several considerations relevant to the determination, including, most significantly, the temporal duration of the stop. An important concern in this regard "is whether the officer used the least intrusive investigative techniques reasonably available to verify or dispel his suspicion in the shortest period of time reasonably possible." Davis, 104 N.J. at 504. "Another factor is the degree of fear and humiliation that the police conduct

engenders." Dickey, 152 N.J. at 479 (quoting United States v. Bloomfield, 40 F.3d 910, 917 (8th Cir. 1994)).

Here, the officer pursued his suspicions diligently under the totality of the circumstances. After defendant withheld consent to search his vehicle, the officer called a sergeant with experience as a drug recognition expert to the scene. The sergeant arrived approximately seventeen minutes later because he was not immediately available.

The sergeant determined that defendant exhibited signs of being under the influence and that narcotics were in the vehicle. The officer then conducted field sobriety tests. Five minutes later, he requested a canine unit, which arrived approximately fifteen minutes later. It took four minutes for the canine sniff. In all, it took approximately one hour and ten minutes from the time of the stop to the completion of the canine sniff.

Following the stop, the police impounded the vehicle, obtained a search warrant, and then recovered the oxycodone pills during the search. At his plea hearing, defendant testified that he understood the pills were in his vehicle and he did not have a prescription for them. The judge imposed a probationary sentence.

There is no indication that defendant was subjected to any unnecessary delay or was detained any longer than required. The officer used the least intrusive investigative techniques

reasonably available to verify or dispel his suspicion, and he did so in a short timeframe. Consequently, we conclude there was no de facto arrest, and that the judge correctly denied defendant's motion to suppress.

We conclude that defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



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