

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-3136-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL T. CONNER-WHITE,

Defendant-Appellant.

Submitted June 4, 2024 – Decided June 19, 2024

Before Judges Paganelli and Whipple.

On appeal from the Superior Court of New Jersey,
Law Division, Camden County, Indictment No. 22-03-
0522.

Hark & Hark attorneys for appellant (Michael J.
Collis, on the briefs).

Grace C. MacAulay, Camden County Prosecutor,
attorney for respondent (Rachel M. Lamb, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Following the denial of his motion to suppress evidence and statements made to law enforcement officers, defendant Michael Conner-White pled guilty to second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1). On June 15, 2023, defendant was sentenced to a five-year term of incarceration, with one year of parole ineligibility, pursuant to the terms of the plea agreement.

Defendant raises the following arguments on appeal, both emanating from the denial of his motion to suppress evidence seized from a traffic stop and the resulting statements he made during the encounter:

I. THE TRIAL COURT ERRONEOUSLY CONCLUDED THE DOG-SNIFF WAS JUSTIFIED BECAUSE OFFICERS LACKED REASONABLE AND ARTICULABLE SUSPICION.

II. THE COURT ERRONEOUSLY CONCLUDED DEFENDANT'S STATEMENTS WERE NOT PRODUCED BY A CUSTODIAL INTERROGATION, AND THUS ADMISSIBLE.

Having considered these contentions in light of the record and applicable legal standards, we vacate the judgment of conviction and remand.

I.

The motion judge summarized his factual findings in a comprehensive written opinion following the evidentiary hearing on defendant's motion, at

which two Berlin Township police officers were the only witnesses. The judge found both officers credible. We defer to the judge's factual findings, quoting from his opinion as necessary. See State v. Gonzales, 227 N.J. 77, 101 (2016) ("We are obliged to uphold the motion judge's factual findings so long as sufficient credible evidence in the record supports those findings.") (citing State v. Elders, 192 N.J. 224, 243-44 (2007)).

On September 20, 2020, while on patrol just before midnight, a Berlin Township police officer observed the vehicle driven by defendant had a partially functional taillight and witnessed defendant improperly utilize a turn signal. The officer activated his emergency lights to conduct a motor vehicle stop. Defendant did not pull over immediately but drove on for a minute, before pulling over onto a side street.

The officer requested defendant's driving credentials and asked defendant why he delayed before pulling over. Defendant responded he was looking for a location to safely pull over and gave the officer his Pennsylvania driver's license and the vehicle registration card. He was unable to locate the insurance documentation. Defendant explained the car was a rental and that he was an Uber driver.

Within a couple minutes, a second officer arrived on the scene to assist as back-up, with a police canine in his vehicle. The first officer asked defendant about a cellphone and wallet he saw in the glove compartment and desserts in the back seat. Defendant advised the phone belonged to a girl, and the desserts were his sister's. Defendant said he started the night in Philadelphia and had some earlier Uber drop-offs in Pennsauken and Cherry Hill. He could not recall his more recent stops, explaining he was unfamiliar with the area. The officer questioned defendant's account, stating defendant had not been coming from the direction of Cherry Hill, but instead from the opposite direction. The officer asked defendant for the location of his next pick-up, and defendant gave varied answers at different times. The officer advised defendant to continue searching for the insurance card.

Both officers returned to their patrol vehicles; the first officer checked whether defendant had a New Jersey driving record, and the second officer checked defendant's criminal history. Approximately seventeen minutes into the traffic stop, these searches turned up no results of note: no New Jersey traffic offenses and no outstanding warrants. The first officer told the second officer he would ask defendant to step out of the car, then returned to defendant's vehicle. Defendant produced an insurance card that showed the

policy term had expired, and the officer asked defendant to exit the car to see the taillight violation. Shortly thereafter, two more officers arrived on the scene.

According to the second officer, defendant communicated calmly, politely, and cooperatively while seated inside of the vehicle. The second officer also stated that, after defendant exited the vehicle, he remained "conversant, made eye contact," and did not appear jittery or disrespectful. As the first officer showed defendant the taillight violation, he continued to ask questions regarding defendant's prior whereabouts. Defendant did not provide specifics regarding his travels that night but continually asserted, if he could access his phone, he would display his Uber app to give the officers details. The officers did not allow defendant to re-enter his car, but defendant eventually permitted one officer to retrieve his phone from the car. The battery of the phone was dead, and defendant was unable to turn it on.

Based on the circumstances and defendant's failure to satisfactorily recount where he had had been, the first officer asked defendant for written consent to search the vehicle. Defendant did not deny or grant consent but objected to the request for consent.

Because defendant did not consent to a search of his car, approximately thirty-one minutes into the traffic stop, the officers on the scene employed an exterior canine sniff of the vehicle. The dog positively indicated on the vehicle. At that point, the officers searched defendant, which yielded negative results. The search of the vehicle, however, yielded marijuana, controlled dangerous substances, packaging materials, a digital scale, a handgun, two extended magazines, and hollow nose bullets.

In his written opinion accompanying his order denying defendant's motion to suppress, the motion judge credited the officer's testimony that defendant was driving "with a broken taillight" and failed to utilize his turn signal properly. The motion judge found both violations justified the initial traffic stop of the vehicle defendant was driving. The judge also found the first officer's broadened inquiry and extended detainment of defendant were justified by the nature of the traffic stop, noting it took defendant almost a minute to pull over, despite ample opportunity to do so earlier. The extent of the officer's inquiry was further supported because the vehicle did not belong to defendant; defendant did not produce a valid insurance card; did not satisfactorily explain his prior location and his intended destination; and continuously asserted his cellphone would provide proof of his previous

locations. Finally, the motion judge determined defendant gave two inconsistent statements, regarding who owned the cellphone in the glove compartment and the dessert items in the back seat.

The motion judge found, based upon the totality of the circumstances, the police officers had reasonable articulable suspicion, independent from the traffic stop, to extend the stop beyond the investigation of a traffic offense. Thus, the police officers were authorized to ask defendant for consent to search his vehicle and to deploy a dog-sniff around the exterior of the car. The court went on to find the canine's subsequent alert for the presence of narcotics in the car provided probable cause to search the vehicle under the automobile exception to the warrant requirement. The motion judge also found defendant was not in custody during the traffic stop, and the officers were not required to give him Miranda¹ warnings. The court denied defendant's motion to suppress the firearm, ammunition, drugs, and equipment for packaging and selling drugs.

On January 19, 2023, defendant filed a motion for reconsideration, which the motion court denied. On June 15, 2023, defendant was sentenced on a second-degree unlawful possession of weapons charge, specifically

¹ Miranda v. Arizona, 384 U.S. 436, 479 (1966).

preserving his right to appeal the motion to suppress and the motion for reconsideration. This appeal timely followed.

II.

An appellate court reviewing a denial of a motion to suppress "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Lamb, 218 N.J. 300, 313 (2014). Factual findings "should be overturned 'only if they are so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Boone, 232 N.J. 417, 426 (2017) (quoting Elders, 192 N.J. at 244). Legal interpretations are owed no deference and thus, are reviewed de novo. State v. Robinson, 228 N.J. 529, 543 (2017).

III.

On appeal, defendant argues the officers were not justified in executing the canine sniff of his vehicle, and the evidence that resulted should have been suppressed. We agree.

A.

"The Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution equally guarantee '[t]he right of

the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" State v. Dunbar, 229 N.J. 521, 532 (2017) (alteration in original) (quoting U.S. Const. amend. IV; N.J. Const. art. 1, ¶ 7). A motor vehicle stop is a constitutionally reasonable seizure when it is based on a police officer's "reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense." Id. at 532-33 (quoting State v. Scriven, 226 N.J. 20, 33-34 (2016)).

During a lawful stop, a police officer may make "'ordinary inquiries incident to [the traffic] stop,' such as 'checking the driver's license,' verifying whether the driver has any outstanding warrants, 'and inspecting the automobile's registration and proof of insurance.'" Id. at 533 (alteration in original) (quoting Rodriguez v. United States, 575 U.S. 348, 355 (2015)). If "the circumstances 'give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" Ibid. (alteration in original) (quoting State v. Dickey, 152 N.J. 468, 479-80 (1998)).

In Terry v. Ohio, the United States Supreme Court articulated a general standard for assessing the reasonableness of a brief investigative stop: "balancing the need to search (or seize) against the invasion which the search

(or seizure) entails." 392 U.S. 1, 21 (1968) (quoting Camara v. Municipal Court, 387 U.S. 523, 534-35 (1967)). This balancing test requires that, for an investigatory stop to be lawful, "the nature and extent of the governmental interests involved" must outweigh the specific intrusion of "constitutionally protected interests of the private citizen." Id. at 20-22. "[I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Id. at 21-22 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)).

In State v. Dickey, our Supreme Court imputed the Terry standard to determine "the reasonableness of a detention following a valid traffic stop" to allow police officers to diligently investigate suspicions that arose after the initial stop. 152 N.J. at 476. As such, to justify "the particular intrusion[,] the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry, 392 U.S. at 21. The police officer's suspicions addressed during an investigative stop must, therefore, rest on "specific and articulable facts" and "rational inferences from those facts" that a crime is being or has been committed. See ibid. "In determining whether reasonable

suspicion exists, a court must consider 'the totality of the circumstances—the whole picture.'" State v. Nelson, 237 N.J. 540, 554-55 (2019) (quoting State v. Stovall, 170 N.J. 346, 361 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981))).

The Dickey Court stated, "when the intrusion on the individual is minimal, and when law enforcement interests outweigh the privacy interests infringed . . . , a stop based on objectively reasonable and articulable suspicions, rather than upon probable cause, is consistent with the Fourth Amendment." 152 N.J. at 477 (citing Terry, 392 U.S. at 20-21). The Dunbar Court clarified this guidance by emphasizing "the incidental checks performed by a police officer may not be performed 'in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.'" 229 N.J. at 533-34 (quoting Rodriguez, 575 U.S. at 355).

A canine sniff during a lawful motor vehicle stop does not implicate constitutional protections. According to the United States Supreme Court, because a canine sniff is "much less intrusive than a typical search," it does not constitute a Fourth Amendment search. United States v. Place, 462 U.S. 696, 706-07 (1983). Our Supreme Court agreed in Dunbar: "Canine sniffs do not involve the unveiling of noncontraband items that would otherwise remain

unexposed to public view and signal only the presence or absence of illegal items. . . . Canine sniffs therefore constitute a unique procedure that is less intrusive than a search." 229 N.J. at 539. Thus, "an officer does not need reasonable suspicion independent from the justification for a traffic stop in order to conduct a canine sniff." Id. at 540.

An officer may not, however, "conduct a canine sniff in a manner that prolongs a traffic stop beyond the time required to complete the stop's mission, unless he possesses reasonable and articulable suspicion to do so." Ibid. (citing Rodriguez, 575 U.S. at 357). "In other words, in the absence of such suspicion, an officer may not add time to the stop." Ibid. (citing Rodriguez, 575 U.S. at 357). Because "a lawful traffic stop may turn unconstitutional if the officer overly broadens the scope or prolongs the stop, absent independent reasonable suspicion," a canine sniff that prolongs the stop is unreasonable and, therefore, unconstitutional. See id. at 539-40.

Regarding consent searches, our Supreme Court held in State v. Carty, "unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop. . . , any further detention to effectuate a consent search is unconstitutional." 170 N.J. 632, 647, modified on other grounds, 174 N.J. 351 (2002). This justification requires that there be "reasonable and articulable

suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity." Ibid. A reasonable and articulable suspicion is necessary "to validate the continued detention associated with the search" but is explicitly required regardless of whether the lawful traffic stop is completed before the consent search. Ibid. The reasonable suspicion requirement also "serves the prophylactic purpose of preventing the police from turning a routine traffic stop into a fishing expedition for criminal activity unrelated to the stop." Ibid.

B.

In this case, the first officer had probable cause to execute a motor vehicle stop of defendant's vehicle because he saw a partially functional taillight and observed defendant improperly utilize his turn signal prior to make a left turn. After lawfully executing the traffic stop, the officer appropriately made "ordinary inquiries incident to [the] stop," including defendant's whereabouts throughout the evening. See Dunbar, 229 N.J. at 533. Upon completion of the standard electronic investigation into defendant's driving record and criminal history, however, the lawful motor vehicle stop was finished. At that point, the officers could have issued the relevant citations and permitted defendant to leave.

Instead, the officers extended the stop for approximately fourteen minutes after the purposes of the lawful traffic stop were satisfied, at which point they executed an exterior canine sniff of the vehicle because defendant "refused to provide yes or no for a written consent to search the vehicle."

The motion judge found the first officer had a reasonable and articulable suspicion, and it was thus "constitutionally appropriate to deploy a dog-sniff around the exterior of the [vehicle]." To describe the totality of the circumstances, the judge recounted:

First, the nature of the traffic stop. [The first officer] noted that it took defendant almost a minute to pull over even though there was ample opportunity to do so earlier. Second, [the officer] immediately learned that the vehicle did not belong to defendant and defendant was having difficulty producing a valid insurance card. In the end, defendant was only able to provide an expired insurance card. Third, defendant was unable to coherently explain his prior location and his intended destination. Fourth, defendant continuously asserted that his cellphone would provide proof of his previous locations. When the officer finally had a chance to take a look at the phone, it did nothing to alleviate the officer's suspicion because it was inoperable. And finally, defendant's two inconsistent statements; initially, regarding who owned the cellphone [the officer] observed earlier in the glove compartment, and then regarding the fact that defendant at one time stated that the desserts were left in the car by his sister and then later stated his sister had never been in the car. Based upon the totality of these circumstances, [the

officer] had reasonable articulable suspicion, independent from the traffic stop, to extend the stop beyond the investigation of a traffic offense.

We disagree with the motion judge's conclusion that these factors, taken together and based on the totality of the circumstances, give rise to a reasonable and articulable suspicion that defendant had been engaged, or was about to engage, in criminal behavior.

The length of time it took defendant to pull over after the officer engaged his emergency lights is certainly notable, but it is not sufficient to cause a reasonable suspicion of criminal wrongdoing. Similarly, the fact that defendant was not the car's owner and had trouble producing a valid proof of insurance does not suggest that criminal wrongdoing is imminent. Defendant's unfamiliarity with New Jersey and his inability to articulate his prior location and his destination are not ideal but, also, are not illegal and do not lead to reasonable suspicion. The fact that defendant's phone was inoperable and "did nothing to alleviate the officer's suspicion" is of little consequence, as defendant does not bear the burden of minimizing the officer's suspicion during the encounter. See State v. Manning, 240 N.J. 308, 329 (2020) ("Because, under our jurisprudence, searches and seizures without warrants are presumptively unreasonable, the State bears the burden of demonstrating by a

preponderance of the evidence that an exception to the warrant requirement applies.").

Finally, based on our review of the record, we conclude defendant's purportedly "inconsistent" statements were not inconsistent. First, at the beginning of the vehicle stop, the officer asked who owned the phone and wallet inside the glove compartment, and defendant replied they belonged to a girl. When questioned about it again about twenty-five minutes later, defendant answered they belonged to another Uber driver. While those two answers are different from each other, they are not inconsistent, as defendant explained the girl was an Uber driver.

Further, the officer asserted defendant had given "inconsistent stories" for about six minutes prior to defendant's statement that the phone belonged to "another Uber driver," when his answer became purportedly inconsistent. Therefore, this could not have been a factor in the first officer's decision to extend the stop or his request for consent to search the car. Similarly, when the officer asked about the dessert trays in the backseat, defendant answered, "that's my sister's."² Defendant then responded to the officer's further

² Although we generally defer to a motion judge's factual findings, we deviate from them when "they are so clearly mistaken that the interests of justice demand intervention and correction." Boone, 232 N.J. at 426. While the

questioning by stating that his sister had not been in the car. Again, these statements are not inconsistent with each other. As neither statement was inconsistent, we find that neither could contribute to the officer's suspicion.

Having addressed the individual factors cited by the motion judge, we are cognizant that, in analyzing the totality of the circumstances for a reasonable and articulable suspicion, "the [c]ourt must not engage in a 'divide-and-conquer' analysis by looking at each fact in isolation." Nelson, 237 N.J. at 555 (quoting District of Columbia v. Wesby, 583 U.S. 48, 60 (2018)). A "reviewing court must decide if the officer's observations, in 'view of the officer's experience and knowledge, taken together with rational inferences drawn from those facts,' warrant a 'limited intrusion upon the individual's freedom.'" Stovall, 170 N.J. at 361 (quoting State v. Davis, 104 N.J. 490, 504 (1986)). "[D]ue weight must be given . . . to the specific reasonable inferences which [an officer] is entitled to draw from the facts in light of [their] experience." Ibid. (all alterations except the last in original) (quoting Terry, 392 U.S. at 27). As described by the United States Supreme Court, the "totality of the circumstances" standard further requires that the court not

motion judge interpreted defendant's statement as "the desserts were left in the car by his sister," the officer's bodycam footage in evidence demonstrates defendant responded to the officer's inquiry with the quote above.

"dismiss outright any circumstances that were 'susceptible of innocent explanation.'" Wesby, 583 U.S. at 61. We therefore must look at all the factors together, including the officer's inferences, in the context of the vehicle stop in its entirety.

It is clear from the record that, prior to executing the motor vehicle stop, the first officer observed defendant's vehicle travelling northwest on New Freedom Road. During his testimony at the suppression hearing, however, the first officer repeatedly asserted defendant was "coming from Winslow" when he was stopped. The first officer's bodycam footage showed he first stated he saw defendant "coming from the Winslow area" a little more than twenty-one minutes into the traffic stop. There is no evidence, however, defendant stated or implied he had been in Winslow Township that evening. This idea was supplied only by the first officer and was later repeated by another officer at the stop. The officer's inference that defendant was "coming from Winslow" was unreasonable in light of the facts, even given his training and experience.

This unreasonable inference was apparently given additional weight by the officer, as he asserted during his testimony that Winslow is "associated with drugs." He testified Winslow's association with drugs figured into his decision to request consent to search the car; his subsequent decision to order

the canine sniff was based on defendant's unwillingness to discuss a consent search. In his written opinion, the motion judge correctly assessed the Winslow line of reasoning as conclusory and declined to consider it as a part of the totality of the circumstances regarding the officer's suspicion of criminal activity.³

Absent the officer's unreasonable inference that defendant was "coming from Winslow," the factors discussed by the motion judge clearly fall short of creating a reasonable and articulable suspicion of imminent or recent criminal activity. Eliminating the unreasonable inference that defendant was coming from an area associated with drugs, his delay in stopping for the officer, inability to produce a valid insurance card, and vagueness about his prior location and destination lose the adverse overtone that led to the officer's suspicion. If a suspicion is not based on "rational inferences" based on

³ Under some circumstances, it may be appropriate for an unreasonable inference to weigh against the reasonableness of further inferences made based on the initial unreasonable inference. The "totality of the circumstances" analysis requires a reviewing court to "decide if the officer's observations, in 'view of the officer's experience and knowledge, taken together with rational inferences drawn from those facts,' warrant a 'limited intrusion upon the individual's freedom.'" Stovall, 170 N.J. at 361 (quoting State v. Davis, 104 N.J. at 504). When the inferences drawn are not reasonable based on the facts at hand, the totality of the circumstances are far less likely to support a reasonable suspicion that can justify compromising an individual's constitutional protections.

"specific and articulable facts," it is insufficient to "reasonably warrant [an] intrusion" of an individual's constitutional protections against unreasonable search and seizure. See Terry, 392 U.S. at 21. As a matter of law, the officers lacked a reasonable and articulable suspicion of imminent or recent criminal activity.

C.

Lacking a reasonable and articulable suspicion, the officers were not justified in extending defendant's detention beyond the amount of time necessary to address the traffic violation. See Dunbar, 229 N.J. at 533-34. Specifically, the officers lacked a "reasonable and articulable suspicion to believe that [defendant] . . . ha[d] engaged in, or [wa]s about to engage in, criminal activity," as required to request defendant's consent to a search of his vehicle. See Carty, 170 N.J. at 647.⁴

Additionally, as argued by defendant on appeal, the canine sniff was unlawful. The canine sniff was executed long after completion of the lawful

⁴ Although Carty stands for the proposition that a consent search may not be legally completed absent a reasonable and articulable suspicion of criminal wrongdoing, 170 N.J. at 647, the request for a consent search is likewise unjustified without a reasonable and articulable suspicion. The detention caused by a request for consent to search is significantly shorter than that imposed by the search itself, but the governmental interest implicated is non-existent, as the search could not be lawfully completed under Carty absent suspicion. See Terry, 392 U.S. at 20-22.

traffic stop and, therefore, unreasonably "prolong[ed the] traffic stop beyond the time required to complete the stop's mission." Dunbar, 229 N.J. at 540. An officer "may continue a detention to administer a canine sniff" only if they have "articulable reasonable suspicion independent from the reason for the traffic stop that a suspect possesses narcotics." Ibid. Because such "articulable reasonable suspicion" is lacking here, defendant's continued detention "beyond the time required to complete the [traffic] stop's mission" was unreasonable and unconstitutional.

IV.

Based on our review of the record, we find the officers lacked the reasonable and articulable suspicion of criminal activity required to extend defendant's detention after completion of the initial investigation incidental to the valid traffic stop, to request defendant's consent to a search of the vehicle, and to prolong a motor vehicle stop for the purpose of executing a canine sniff. The evidence resulting from the unconstitutional canine sniff should have been suppressed upon defendant's motion. We vacate defendant's conviction and remand for further proceedings in line with this opinion.

Defendant's other arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Vacated and remanded. We do not retain jurisdiction.

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

A handwritten signature in black ink, appearing to be 'SJA', is written over the printed text.

CLERK OF THE APPELLATE DIVISION