SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3415-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TREVOR F. SEER, a/k/a
TREVOR SEER, and
TREVOR F. SEAR,

Defendant-Appellant.

Submitted May 2, 2022 – Decided May 23, 2022

Before Judges Firko and Petrillo.

On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 16-05-0498 and Accusation No. 17-02-0156.

Joseph E. Krakora, Public Defender, attorney for appellant (Taylor L. Napolitano, Assistant Deputy Public Defender, of counsel and on the briefs).

Jeffrey H. Sutherland, Cape May County Prosecutor, attorney for respondent (Gretchen A. Pickering, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Trevor F. Seer appeals from a February 25, 2020 judgment of conviction resulting from a plea agreement for second-degree certain persons not to possess weapons and hindering apprehension or prosecution. He was sentenced to an aggregate eight-year prison term subject to a four-year parole disqualifier. On appeal, defendant argues:

> POINT I
>
> BECAUSE [DEFENDANT] WAS DETAINED BY POLICE BASED ON A VAGUE, FUNCTIONALLY ANONYMOUS TIP THAT LACKED ANY PREDICTIVE VALUE, AND OTHER EQUIVOCAL CIRCUMSTANCES THAT DO NOT AMOUNT TO REASONABLE SUSPICION, ANY EVIDENCE OBTAINED FROM HIS DETENTION MUST BE SUPPRESSED.
>
> A. This Warrantless Encounter Was A Terry[1] Stop Requiring Reasonable Suspicion.
>
> B. There was Insufficient Basis To Warrant A Terry Stop.
>
> i. The Tip.
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> ii. Contemporaneous Broadcast Of The Tip.
>
> iii. Lateness Of The Hour.

[1] Terry v. Ohio, 392 U.S. 1 (1968).

iv. High-Crime And Narcotics-Use Area.

v. Innocent Nervous Behavior.

POINT II

[DEFENDANT]'S EIGHT-YEAR SENTENCE WITH A FOUR-YEAR PAROLE DISQUALIFIER IS EXCESSIVE GIVEN HIS SUCCESSFUL COOPERATION IN THE PROSECUTION OF A BANK ROBBERY AND HIS CLEAN RECORD DURING THE THREE YEARS BETWEEN THE PLEA AND SENTENCE, AND FOR THREE YEARS PRIOR TO HIS ARREST.

We are unpersuaded by these arguments and affirm.

I.

The following facts are derived from the motion to suppress record. On March 27, 2016, at or about 2:30 a.m., Patrolman Elias Aboud stopped a motor vehicle because the driver, John Glover, did not have his headlights on. Upon approaching the vehicle, Glover loudly complained about being pulled over and asked Aboud why he was stopped when there's "[a] white male in a pickup truck in the Wawa parking lot [three blocks away], ingesting heroin." Aboud thanked Glover for the information, instructed him that it would be investigated, and relayed the information over the radio without attribution to all Wildwood police officers in the area. Aboud did not ask Glover for more information about the

white male or the truck. Glover was issued a summons and two warnings, for tinted windows, in violation of N.J.S.A. 39:3-75, and an obstructed view of a mirror, in violation of N.J.S.A. 39:3-74.

Patrolman Lucas Bottoms responded to Aboud's radio broadcast and was approximately three blocks away from the Wawa parking lot at the time. Bottoms testified he is familiar with this particular Wawa and previously made numerous controlled dangerous substance (CDS) related arrests there. When Bottoms pulled into the Wawa parking lot, he observed only one vehicle, a silver pick-up truck. Bottoms saw a white male, defendant, in the driver's seat, "crouched over with his head almost leaning against the steering wheel." Bottoms could not tell what defendant was doing inside the truck.

Thereafter, Bottoms parked his vehicle eight to ten feet away from defendant's truck and approached the passenger-side window. As Bottoms approached, defendant "raised his head very fast and just looked over at [him]. His eyes were bugged out a little bit. . . . They[were] wide open. . . . [H]e looked very startled." Bottoms testified he proceeded to speak with defendant through the rolled-up window but had trouble hearing him.

> I asked [defendant] if everything was all right – if everything was okay.
>
> . . . .

> . . . He said, yeah, everything's fine. But he was very hesitant. . . .
>
> . . . .
>
> I said, okay. I said, where you're coming from? And he said, he was at the bowling alley with a friend. And then I asked him—I was, like, for how long you've been here? And he said about five minutes. I said, why aren't you going into the Wawa? And he had no reasonable answer for that.

Based on his observations, Bottoms became concerned defendant may have been driving while intoxicated.[2] Bottoms testified at this point of the encounter defendant would not have been free to leave but was not under arrest.

Bottoms continued to ask defendant a few more questions but had trouble hearing the answers. Therefore, Bottoms walked around the front of defendant's truck to the driver-side window in order to hear him better. While walking around to the front of defendant's truck, Bottoms maintained eye contract with defendant and observed him "reaching down." Bottoms testified the parking lot's lights made defendant "very visible" and he could see his face clearly. "[I]t looked like [defendant] was stuffing down in the crease of the seat[,]. . . .

[2] Driving while intoxicated is an indictable offense pursuant to N.J.S.A. 39:4-50(a).

attempting to conceal an unknown object. I'm not sure what he was trying to stick down there, but he was sticking something down the middle of the seat."

In addition, Bottoms testified he became concerned for his safety because he did not know what defendant was attempting to conceal and asked him to step out of his truck. When defendant stepped out of the truck, a few "bags of heroin fell off of his lap onto the ground with a straw." Bottoms immediately arrested defendant. Bottoms proceeded to search defendant, incident to the arrest, but the search uncovered no additional evidence. Bottoms seized the bags and straw, placed defendant in the rear seat of his vehicle, and arranged for his truck to be towed, noting "his registration was expired."

Bottoms transported defendant to the Wildwood police station and escorted him to the booking area. Bottoms handcuffed defendant to a bar, sat him down, and went into another "room to further evaluate the evidence." While evaluating the evidence, Sergeant Shawn Yuhas informed Bottoms that defendant was "making further movements towards his lower back" and advised Bottoms to "conduct a more thorough search." A loaded handgun was recovered from defendant's waistband and seized.

Bottoms advised defendant of his rights and asked him if he would consent to a search of his truck. Defendant consented to the search in writing. The

search of defendant's truck yielded numerous pills of "all different kinds,"[3] "some kind of white powdery substance,"[4] four knives, glass smoking pipes, and paraphernalia.[5] Defendant conceded two of the knives were "weapon knives."

On May 17, 2016, defendant was charged with two counts of third-degree possession of a CDS, heroin (count one) and codeine (count two), contrary to N.J.S.A. 2C:35-10(a)(1); third-degree possession with intent to distribute CDS, heroin (count three), contrary to N.J.S.A. 2C:35-5(a)(1), (b)(3); second-degree unlawful possession of a weapon, a Glock .45 caliber handgun (count four), contrary to N.J.S.A. 2C:39-5(b)(1); third-degree possession with intent to distribute CDS within 1,000 feet of school property (count five), contrary to N.J.S.A. 2C:35-5(a)(1), -7(a); second-degree possession with intent to distribute CDS within 500 feet of public property (count six), contrary to N.J.S.A. 2C:35-5(a)(1), -7.1(a); second-degree possession of a weapon while committing a certain CDS crime (count seven), contrary to N.J.S.A. 2C:39-4.1(a); fourth-

[3] The numerous pills included fifteen codeine pills, one buprenorphine pill, one dextroamphetamine pill, and four alprazolam pills.

[4] The search yielded "about 188 bags of suspected heroin," and one "yellow plastic container containing a white powdery substance suspected to be CDS."

[5] The CDS paraphernalia included "multiple small clear plastic Ziploc baggies, multiple empty blue paper wax folds, a straw[,] . . . and one brown circular wooden grinder."

degree unlawful possession of a weapon, four knives (count eight), contrary to N.J.S.A. 2C:39-5(d); and second-degree certain persons not to possess weapons (count nine), contrary to N.J.S.A. 2C:39-7(b)(1).

On July 21, 2016, defendant filed a motion to suppress the physical evidence recovered from his truck. He argued: (1) the "police exceeded the scope of a field inquiry"; and (2) the police had "no reasonable suspicion to order [defendant] out of the truck." On November 21, 2016, a prior judge conducted a hearing on defendant's motion to suppress. Aboud, Bottoms, and Yuhas testified at the hearing. On December 19, 2016, the judge rendered his decision on the record.

After considering the testimony, conducting oral argument, and briefing, the judge concluded that the three officers had "a calm demeanor," and "answered all the questions directly as were posed." The judge found Aboud, Bottoms, and Yuhas "testified credibly." In addition, the judge determined Bottoms had a reasonable suspicion of criminal activity when he asked defendant to exit his truck based on the totality of the circumstances. In his decision, the judge emphasized:

> The specific, articulable, and objective facts from the totality of the circumstances were, one, the contemporaneous information received by and transmitted by Aboud via radio, the corroboration of

> Aboud's information from Glover that included the descriptions of the vehicle and number of passengers and the location, the lateness of the hour, the subject location as an area that [Officer] Bottoms described as a high CDS activity and distribution area, defendant's behavior when he was crouched down in his vehicle with his head almost in the steering wheel and not moving, and defendant's nervous demeanor and lack of eye contact with bugged out eyes when [Officer] Bottoms approached and spoke with him, defendant's furtive hand movements and attempt to conceal an unknown item while Bottoms was speaking and moving around the front of the truck to the driver's side of the vehicle.

The judge denied defendant's motion to suppress and entered a memorializing order.

Subsequently, defendant was charged by way of accusation with the additional offense of hindering apprehension or prosecution, contrary to N.J.S.A. 2C:29-3(a)(3), which alleged he suppressed, concealed, or destroyed evidence that might otherwise have aided in the apprehension of Joseph McCarraher in relation to a bank robbery committed on February 25, 2016. On February 23, 2017, pursuant to a negotiated plea agreement, defendant pled guilty to count nine, the indicted offense of second-degree certain persons not to possess weapons, and the accusation charge of hindering.

The recommended sentence was an aggregate of fifteen years with the two charges to run consecutively and a parole ineligibility period of ten years. As

part of the negotiated plea agreement, all CDS charges would be dismissed. Sentencing was postponed, however, pending defendant's testimony against McCarraher, which defendant's negotiated plea agreement was contingent on. On February 14, 2020, having concluded the McCarraher matter, the judge sentenced defendant to an aggregate sentence of eight years with the two charges to run concurrently pursuant to the parties' amended negotiated plea agreement.[6] The parole ineligibility period was four years. As part of the amended plea agreement, defendant pled guilty to possession of a gun without a permit, contrary to N.J.S.A. 2C:39-5(b)(1) instead of certain persons not to possess weapons. This appeal followed.

II.

Our review of a trial court's order denying a motion to suppress following an evidentiary hearing is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). Therefore, "we 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." Ibid. (internal quotation marks omitted) (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). Such deference is appropriate for institutional

[6] The parties' amended plea agreement allowed defendant to appeal the December 19, 2016 order denying his motion to suppress the physical evidence recovered.

reasons: (1) recognizing "the trial court's 'experience and expertise in fulfilling the role of factfinder'"; (2) maintaining the trial court's "legitimacy"; and (3) avoiding "duplicating efforts without significantly improving decisional accuracy." State v. Carrillo, 469 N.J. Super. 318, 332 (App. Div. 2021) (quoting State v. S.S., 229 N.J. 360, 380-81 (2017)). Therefore, a trial court's factual findings should only be overturned if the findings are "so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Gamble, 218 N.J. 412, 425 (2014) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). "A trial court's legal conclusions, however, and its view of the consequences that flow from established facts, are reviewed de novo." Id. at 526-27 (internal quotation marks omitted) (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Both the United States Constitution and "the New Jersey Constitution, in almost identical language,[7] protect against unreasonable searches and seizures."[8] Nyema, 249 N.J. at 527. Under both constitutions, searches and seizures are presumptively unreasonable, and therefore invalid, if conducted without a warrant based upon probable cause. See ibid. (quoting Elders, 192 N.J. at 246). Absent such a warrant, the State bears the burden to prove the search or seizure fell within a recognized exception to the warrant requirement. See ibid. (quoting Elders, 192 N.J. at 246). Both investigatory stops and field inquiries are exceptions to the warrant requirement. See State v. Rosario, 229 N.J. 263, 271-72 (2017).

[7] Compare U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."), with N.J. Const. art. I, ¶ 7 ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.").

[8] A seizure occurs whenever: (1) an officer "accosts an individual"; and (2) restrains his or her freedom to walk away. Terry, 392 U.S. at 16.

An investigatory stop, also called a Terry stop,[9] "involves a relatively brief detention by police during which a person's movement is restricted." Nyema, 249 N.J. at 527 (emphasis added). An investigatory stop must be "based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity." Ibid. (internal quotation marks omitted) (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). "Although reasonable suspicion is a less demanding standard than probable cause, [n]either inarticulate hunches nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights." Nyema, 249 N.J. at 527-28 (internal quotation marks omitted) (alteration in original) (quoting State v. Stovall, 170 N.J. 346, 372 (2002) (Coleman, J., concurring in part and dissenting in part)).

In contrast, a field inquiry requires neither probable cause nor reasonable suspicion.[10] See Rosario, 229 N.J. at 272. "A field inquiry is essentially a voluntary encounter between the police and a member of the public in which the police ask questions and do not compel [the person] to answer," i.e., the person

[9] Terry, 392 U.S. 1.

[10] A field inquiry, however, must still comply with the Equal Protection Clause. See Nyema, 249 N.J. at 529.

may simply proceed on his or her way without even listening to the officer's questions. Id. at 271; see also id. at 271-72 (noting the test to be whether the defendant "reasonably believed he [or she] could walk away without answering any of [the officer's] questions" (second alteration in original) (emphasis added) (quoting State v. Maryland, 167 N.J. 471, 483 (2001))). "Because a field inquiry is voluntary and does not effect a seizure in constitutional terms, no particular suspicion of criminal activity is necessary on the part of an officer conducting such an inquiry." Id. at 272.

The principal difference between a field inquiry and an investigatory stop is whether the person's movement is restricted. Id. at 273. Such movement is deemed restricted if an objectively reasonable person in the individual's position "would not feel free to leave." Nyema, 249 N.J. at 527 (citing Rosario, 229 N.J. at 272); Rodriguez, 172 N.J. at 128. Therefore, a field inquiry may escalate into an investigatory stop if, at any time, an objectively reasonable person would no longer feel free to leave. See Rosario, 229 N.J. at 273. Because "a single encounter may escalate from 'inquiry' to 'stop' . . . the criteria for each category must be applied as the situation shades off from one category to the other." State v. Sirianni, 347 N.J. Super. 382, 388 (App. Div. 2002) (quoting State v. Alexander, 191 N.J. Super. 573, 577 (App Div. 1983)). Consequently,

subsequent questioning after an inquiry has escalated into a stop violates a person's constitutional rights unless a reasonable and articulable suspicion had "ripen[ed] prior to the officer's subsequent exchanges with [the] defendant." Rosario, 229 N.J. at 267.

Therefore, whether an investigatory stop violated a person's constitutional rights requires "two distinct 'totality of the circumstances' inquiries." Id. at 275. First, whether based on a totality of the circumstances an encounter constituted at its inception or escalated into an investigatory stop, i.e., at any point during the encounter would an objectively reasonable person in similar circumstances have felt free to leave. See Rodriguez, 172 N.J. at 128; Rosario, 229 N.J. at 275. Second, whether based on a totality of the circumstances the police "had a reasonable articulable suspicion of criminal wrongdoing to justify" the investigatory stop. See Rodriguez, 172 N.J. at 129; Rosario, 229 N.J. at 276; see also Nyema, 249 N.J. at 528 (noting an assessment of the totality of the circumstances to be "a highly fact-intensive inquiry," which balances "the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions." (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)). An investigatory stop "premised on less than reasonable and articulable suspicion is an 'unlawful seizure,' and

evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." State v. Chisum, 236 N.J. 530, 546 (2019) (quoting Elders, 192 N.J. at 247).

Here, defendant argues, based on the totality of the circumstances: (1) Bottoms's field inquiry escalated into an investigatory stop when he asked defendant, "[W]here are you coming from?"; and (2) the circumstances did not amount to reasonable suspicion as required to justify defendant's restriction.

First, defendant argues the motion judge erred in finding Bottoms's encounter with him to have been a field inquiry that escalated into an investigatory stop when Bottoms ordered defendant to exit the truck. Specifically, defendant claims the inquiry escalated into a stop the moment when Bottoms asked defendant "where he had been prior to his arrival in the Wawa parking lot."[11] At this time, defendant contends the surrounding circumstances

[11] Although defendant argues Bottoms's parking, approach, and initial questioning to have been improper, or even "an imposing and isolating show of force," he does not argue Bottoms's initial approach or questioning of him to have been an investigatory stop. See Rosario, 229 N.J. at 274 (noting an officer's encounter with a person in a parked car to generally be a field inquiry so long as the officer did not stop the motor vehicle). Defendant specifically argues the encounter did not escalate to a stop until Bottoms asked where defendant "had come from prior to the Wawa." Thus, defendant concedes Bottoms's encounter with him to have initially been a field inquiry prior to the point of escalation.

did not amount to a reasonable suspicion to justify the scope of the intrusion on his constitutional rights.

The question of when a field inquiry escalates into an investigatory stop "turns on the tenor of the officer's actions and whether an objectively reasonable person in defendant's position would have felt free to exit the encounter." Rodriguez, 172 N.J. 128; see also id. at 129 (recognizing, "as a practical matter, citizens almost never feel free to end an encounter initiated by the police"). When considering whether an inquiry has escalated into a stop, courts consider whether the officer's "questions were put in a conversational manner, if he [or she] did not make demands or issue orders, and if his [or her] questions were not overbearing or harassing in nature." Id. at 126 (quoting State v. Davis, 104 N.J. 490, 497 n.6 (1986)).

Questions that are either authoritative in nature or presumptive of criminal conduct may escalate an inquiry. See State v. Rodriguez, 336 N.J. Super. 550, 563–64 (App. Div. 2001), rev'd on other grounds, 172 N.J. 117; see, e.g., State ex rel. J.G., 320 N.J. Super. 21, 30-31 (App. Div. 1999) (holding an inquiry escalated into a stop when the officer asked if the defendant had "anything on him that he shouldn't have"); State v. Contreras, 326 N.J. Super. 528, 534, 540 (App. Div. 1999) (holding an inquiry escalated into a stop when the officer asked

if the defendant had any drugs or weapons on his person); State v. Costa, 327 N.J. Super. 22, 31 (App. Div. 1999) (holding officer's questions of "'what are you doing' and '[a]re you doing something you're not supposed to be doing out here,' clearly presupposed criminal conduct" (alteration in original)).

Asking a person where they were coming from does not inherently escalate an inquiry into a stop. In State v. Adubato, where an officer pulled up behind the defendant's "stopped car late at night," we held the officer was justified in making the inquiry and pulling up behind the defendant did not escalate the inquiry into a stop. See 420 N.J. Super. 167, 180-81 (App. Div. 2011). We noted:

> As [the officer] approached the driver's side window, he detected the odor of alcohol, which he determined was coming from [the defendant]'s "breath." [The officer] also noted that [the defendant]'s eyes were "bloodshot and watery," and that "his speech was also affected." When [the officer] asked [the defendant] where he was coming from, [the defendant] responded that he had been drinking at a pub in Bloomfield. At that point, [the officer] had the factual basis for an "articulable suspicion" that [the defendant] had engaged in criminal conduct, i.e., driving while intoxicated, sufficient to warrant a[n] [interlocutory] stop, including the administration of field-sobriety tests.
>
> [Id. at 181 (emphases added).]

Therefore, we concluded the officer's questioning of where the defendant was coming from to have been part of the officer's inquiry, which proved integral to justify the subsequent stop. See id. at 181-82. We concluded such questioning to not be "harassing, overbearing, or accusatory in nature." Id. at 177 (quoting State v. Pineiro, 181 N.J. 13, 20 (2004)).

Here, like in Adubato, Bottoms's question relating to where defendant was coming from was part of an inquiry, which had not yet escalated to a stop. See id. at 181-82. Moreover, Bottoms's subsequent questions—"how long you've been here," and "why aren't you going into the Wawa?" were simply part of an inquiry. We are satisfied these questions were neither authoritative in nature nor presumptive of criminal conduct. See, e.g., J.G., 320 N.J. Super. at 31 (asking "anything on him that he shouldn't have"); Contreras, 326 N.J. Super. at 534, 540 (asking if the defendant had any drugs or weapons on his person); Costa, 327 N.J. Super. at 31 (asking "what are you doing?" and "[a]re you doing something you're not supposed to be doing out here?"). The inquiry did not escalate into a stop until Bottoms ordered defendant to exit the truck. The judge was correct in denying defendant's motion to suppress because Bottoms did not require reasonable suspicion prior to ordering defendant to exit his truck.

We note reasonable suspicion must be "based on specific and articulable facts . . . taken together with rational inferences from those facts." Nyema, 249 N.J. at 527 (internal quotation marks omitted) (quoting Rodriguez, 172 N.J. at 126). "[N]either 'inarticulate hunches' nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights." Id. at 527-28 (quoting Stovall, 170 N.J. at 372 (Coleman, J., concurring in part and dissenting in part)). Determining whether reasonable suspicion exists "is a highly fact-intensive inquiry that demands evaluation of 'the totality of circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions.'" Id. at 528 (quoting Privott, 203 N.J. at 25-26); see also id. at 526 (noting a reviewing court must defer to the findings of the trial court "so long as those findings are 'supported by sufficient credible evidence in the record'" (quoting Ahmad, 246 N.J. at 609)).

A reasonable suspicion inquiry often "begins with the description police obtained regarding a person involved in criminal activity and whether that information was sufficient to initiate an investigatory detention." Id. at 528. A reasonable suspicion may be based on a person's commonality of race and sex,

id. at 530, "the existence of [a] tip, the lateness of the hour," State v. Matthews, 398 N.J. Super. 551, 559 (App. Div. 2008), the "area's high crime reputation, [the] officer's awareness of recent criminal activity in the area," Pineiro, 181 N.J. at 26-27 (citing State v. Freeman, 414 N.E.2d 1044, 1046-47 (Ohio 1980)), and the person's "nervous behavior, furtive movements, or other actions," Nyema, 249 N.J. at 530.

However, a person's commonality of race and sex alone is insufficient to justify a stop. See id. at 528-29. A suspect's description requires other, discrete factors, "such as the suspect['s] approximate height[], weight[], age[], clothing worn, mode of transportation, or any other identifying feature that would differentiate the . . . suspect[] from any other [man or woman] in New Jersey." Id. at 531; see also Matthews, 398 N.J. Super. at 559 (noting "the confirmation of the type, color, and location of the vehicle reported in the tip" to be a relevant factor justifying an investigatory stop). Similarly, seemingly furtive movements alone cannot "form the basis for reasonable suspicion." See id. at 530, 534; see, e.g., Rosario, 229 N.J. at 277 ("Nervousness and excited movements are common responses to unanticipated encounters with police officers on the road . . . ."); State v. Lund, 119 N.J. 35, 47 (1990) ("[M]ere furtive gestures of an occupant of an automobile do not give rise to an articulable suspicion suggesting

criminal activity." (quoting State v. Schlosser, 774 P.2d 1132, 1137 (Utah 1989))); State v. Stampone, 341 N.J. Super. 247, 252 (App. Div. 2001) ("A person's failure to make eye contact with the police does not change that.").

Here, defendant argues Bottoms's encounter lacked reasonable suspicion because: (i) Bottoms relied on an anonymous tip without first corroborating any criminal activity; and (ii) the circumstances of the stop, "taken together or apart," do not provide "a sufficient quantum of suspicion to validate the stop."

First, defendant argues the tip from Glover and subsequent radio broadcast were insufficient to support an investigatory stop. Specifically, defendant claims "[t]he tip—that a white man was ingesting heroin in a pickup truck in the Wawa parking lot—was insufficient to support a stop . . . because of its functionally anonymous source." (Emphasis added). Again, we disagree.

Standing alone, an anonymous tip "inherently lacks the reliability necessary to support reasonable suspicion." Rosario, 229 N.J. at 276. An "anonymous informant's 'veracity,' 'reliability[,]' and 'basis of knowledge' are 'relevant in determining the value of [the tip].'" State v. Amelio, 197 N.J. 207, 212 (2008) (quoting Rodriguez, 172 N.J. at 127). However, because "the veracity of persons supplying anonymous tips is 'by hypothesis largely unknown, and unknowable,'" the police must typically verify that the

anonymous "tip is reliable by some independent corroborative effort" to justify the police's subsequent suspicion. Rodriguez, 172 N.J. at 127 (quoting Alabama v. White, 496 U.S. 325, 329-30 (1990)). The fact that an anonymous informant may accurately identify a defendant and his or her vehicle, alone, is insufficient because such innocent identifying details fail to prove an informant's "knowledge of concealed criminal activity.'" Rosario, 229 N.J. at 276 (quoting Florida v. J.L., 529 U.S. 266, 272 (2000)).

In contrast, "'[a] report by a concerned citizen' or a known person is not 'viewed with the same degree of suspicion that applies to a tip by a confidential informant' or an anonymous informant." Amelio, 197 N.J. at 212 (quoting Wildoner v. Borough of Ramsey, 162 N.J. 375, 390 (2000)). "There is an assumption grounded in common experience that such a person is motivated by factors that are consistent with law enforcement goals." Ibid. (quoting Davis, 104 N.J. at 506). And, the police are not typically required to verify a tip of a concerned citizen is reliable by an independent corroborative effort to justify the police's subsequent suspicion. See Stovall, 170 N.J. at 362 (noting "[w]hen an informant is an ordinary citizen, New Jersey courts assume that the informant has sufficient veracity and require no further demonstration of reliability").

When an initial officer communicates a tip to another officer, the reliability of the tip is afforded the same degree of reliability as if the initial officer was conducting the investigatory stop. See State v. Crawley, 187 N.J. 440, 457-58 (2006). If a dispatcher is "provided adequate facts from a reliable informant to establish a reasonable suspicion," the dispatcher has the power to delegate an "actual stop to officers in the field." Id. at 457. However, "if the information received by the dispatcher . . . fell short of the suspicion required by law for an investigatory stop," the field officer's good faith reliance does "not make the stop a constitutional one." Id. at 457-58. Therefore, the anonymity of an informant is not determined by whether the officer conducting the stop was aware of the informant's identify, but rather whether the officer who initially received the top was aware.

Here, despite defendant's contentions to the contrary, the motion judge did not find Glover's tip to have been anonymous. The record shows the judge found that Glover was a concerned citizen. As such, Bottoms was not required to verify that the tip was "reliable by some independent corroborative effort." Rodriguez, 172 N.J. at 127 (quoting White, 496 U.S. at 329-30). The judge's decision was based upon substantial credible evidence in the record.

Second, defendant argues each of the circumstances cited by the motion judge—the lateness of the hour, the high-crime and narcotics-use area, and defendant's innocent nervous behavior, "taken together or apart," do not provide "a sufficient quantum of suspicion to validate the stop." In particular, defendant claims that these circumstances "taken together or apart" cannot justify a finding of reasonable suspicion, and he argues each of these circumstances individually cannot justify an investigatory stop independently.

We must defer to the trial court's factual findings "so long as those findings are 'supported by sufficient credible evidence in the record,'" Nyema, 249 N.J. at 526 (quoting Ahmad, 246 N.J. at 609), and are not "so clearly mistaken 'that the interests of justice demand intervention and correction.'" Gamble, 218 N.J. at 425 (quoting Elders, 192 N.J. at 244). Here, defendant does not contest the motion judge's findings of lateness of the hour, location of high criminality,[12] and defendant's nervous behavior and demeanor to be unsupported

[12] Defendant also contends Bottoms should have cited actual statistics to support his testimony that the Wawa parking lot was a high-crime and narcotics use area. However, defendant cites to no case law or statute requiring an officer to provide empirical data to support an area's high crime reputation.

An investigatory stop must be based on an officer's reasonable and particularized suspicion "based upon an objective observation that the person stopped has been or is about to engage in criminal wrongdoing." Rodriguez, 172 N.J. at 127 (emphasis added) (quoting Davis, 104 N.J. at 504). "Such

by the record. Nor does defendant argue the trial court could not consider these circumstances. See Matthews, 398 N.J. Super. at 559 (noting "the lateness of the hour" as a factor justifying an investigatory stop); Pineiro, 181 N.J. at 26-27 (noting an "area's high crime reputation" and the "officer's awareness of recent criminal activity in [the] area" as factors justifying an investigatory stop); Nyema, 249 N.J. at 530 ("[F]actors such as nervous behavior, furtive movements, or other actions form the basis for reasonable and articulable suspicion."). We are convinced the record supports the motion judge's finding that based on the totality of the circumstances, there was reasonable suspicion

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observations are those that, in view of [the] officer's experience and knowledge, taken together with rational inferences drawn from those facts, reasonabl[y] warrant the limited intrusion upon the individual's freedom." Ibid. (alterations in original) (emphasis added) (quoting Davis, 104 N.J. at 504). An officer's observation of an area's high crime reputation may be based on an officer's experience and knowledge. See, e.g., Pineiro, 181 N.J. at 26 (holding "the reputation or history of an area and an officer's experience with and knowledge of the suspected transfer of narcotics as relevant factors to determine the validity of a[n] [investigatory] stop"); Alexander, 191 N.J. Super. at 576 (finding officers had previously been advised "the area they were patrolling was 'a high crime area").

Here, Bottom's observation of the Wildwood Wawa's high-crime reputation was based on the officer's experience and knowledge. As noted by the motion judge, "Bottoms testified that he has personally observed CDS related crimes committed at this Wawa in the past in the bathroom, during his observations, and that he has personally made CDS arrests there. He testified that this store has a high statistic of crime narcotic use and distribution of narcotics." (Emphases added)). Actual statistics were not required to be cited by Bottoms to support his testimony.

to justify an investigatory stop. There was no abuse of discretion in the motion judge's decision to deny defendant's motion to suppress the physical evidence emanating from the stop.

III.

Defendant also argues his sentence is excessive. He contends the sentencing judge erred by: (1) failing to find mitigating factor seven, given defendant's law-abiding behavior for the three years preceding his arrest and during the three years he was on the street between his plea and sentence; (2) undervaluing mitigating factor twelve, defendant's "substantial cooperation in the prosecution of McCarraher"; and (3) assigning undue weight to aggravating factors three, six, and nine, defendant's risk of re-offense, criminal record, and the need for deterrence.

We apply a "deferential" standard in reviewing a lower court's sentencing determination. State v. Fuentes, 217 N.J. 57, 70 (2014). This court:

> must affirm the sentence unless (1) the sentencing guidelines were violated; (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) "the application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience."
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> [Ibid. (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).]

Thus, we review a trial court's sentencing decision for an abuse of discretion. State v. Jones, 232 N.J. 308, 318 (2018). This highly deferential standard applies only when "the trial [court] follows the Code and the basic precepts that channel sentencing discretion." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Case, 220 N.J. 49, 65 (2014)).

Mitigating factors called to the trial court's attention may not be ignored and the court must explain "clearly" why each "factor presented by the parties was [either] found or rejected and how the factors were balanced to arrive at the sentence." Case, 220 N.J. at 66 (citing Fuentes, 217 N.J. at 73). However, the trial court's consideration of relevant factors is not limited to those merely called to its attention by the parties. See id. at 64 (quoting State v. Dalziel, 182 N.J. 494, 505 (2005)). The court must also consider all "mitigating factors that are suggested in the record." State v. Blackmon, 202 N.J. 283, 297 (2010) (emphasis added). "In short, mitigating factors 'supported by credible evidence' are required to 'be part of the deliberative process.'" Case, 220 N.J. at 64 (quoting Dalziel, 182 N.J. at 505).

A trial court need not enumerate a mitigating factor for it to be part of the deliberative process. See State v. Bieniek, 200 N.J. 601, 609 (2010) ("[O]ur case law does not require that trial courts explicitly reject every mitigating factor

. . . ."). Although the Court has encouraged trial courts to address each relevant factor directly, "even if only briefly," the Court has held "[i]t is sufficient that the trial court provides reasons for imposing its sentence that reveal the court's consideration of all applicable mitigating factors in reaching its sentencing decision." Ibid. We review the trial court's reasons for imposing its sentence and whether the trial court "was mindful of and did consider the [required] mitigating factor[]." Ibid.

Here, defendant argues the trial court entirely ignored his law-abiding behavior during "the three years prior to his arrest and the three years between the plea and sentencing," pursuant to mitigating factor seven. Mitigating factor seven provides a sentencing court may consider whether "[t]he defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense." N.J.S.A. 2C:44-1(b)(7) (emphasis added). However, N.J.S.A. 2C:44-1(b)(7) does not require the sentencing court to consider a defendant's "law-abiding life" after the commission of the offense or offenses charged. Moreover, a sentencing court must consider "all relevant sentencing factors on the day defendant stands before the court," State v. Rivera, 249 N.J. 285, 303 (2021), and must consider "evidence of post-offense conduct, rehabilitative or otherwise, . . . in assessing

the applicability of, and weight to be given to, aggravating and mitigating factors." State v. Jaffe, 220 N.J. 114, 124 (2014). Here, the sentencing court was not required to consider defendant's post-conviction conduct under mitigating factor seven, but it was required to consider such conduct under alternative mitigating factors, namely mitigating factors eight, nine, and ten.[13]

As noted by the sentencing court, defendant has

> a criminal history that reveals nine arrests, three prior pleas, three findings of guilt, and zero disorderly persons offenses. . . . [D]efendant does have some municipal court convictions that are out of the State of Delaware. And his indictable record shows a third-degree aggravated assault as well as CDS possession with intent, and now this unlawful possession of a weapon.
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> The incident offense represents this defendant's fourth and fifth indictable convictions. . . . [D]efendant has been afforded diversionary treatment in the past with limited success. He had a diversionary program in the State of Delaware, which was completed partially. We have a juvenile history of three adjudications, zero [Violation of Probation]s, [and] no domestic violence history.

[13] Sentencing courts are also required to consider post-offense evidence with regard to mitigating factors six, eleven, and twelve if relevant. See N.J.S.A. 2C:44-1(b)(6), (11) to (12). Here, neither mitigating factors six, victim compensation, nor eleven, excessive hardship of imprisonment, are relevant based on defendant's post-conviction evidence. N.J.S.A. 2C:44-1(b)(6), (11). Mitigating factor twelve, defendant's willingness "to cooperate with law enforcement," was both considered and ultimately found. N.J.S.A. 2C:44-1(b)(12).

The court observed defendant had not led a law-abiding life for a substantial period of time to warrant a finding of mitigating factor seven. Saliently, defendant admitted to using heroin "until his arrest in this matter." Therefore, the court did not abuse its discretion in not finding mitigating factor seven applied. Remand may be required when a sentencing court fails to find mitigating factors clearly supported by post-offense conduct. See Rivera, 249 N.J. at 300. "[A] defendant should be assessed as he [or she] stands before the court on the day of sentencing . . . ." Id. at 299 (quoting Jaffe, 220 N.J. at 116). As such, a sentencing court must fully consider evidence of post-offense conduct, cooperative, rehabilitative, or otherwise, "in assessing and weighing the statutory factors." Id. at 300 (citing Jaffe, 220 N.J. at 124). In Jaffe, where the sentencing court declined to consider any post-offense evidence of defendant's rehabilitative efforts, the Court reversed and remanded for resentencing. Ibid. (citing Jaffe, 220 N.J. at 116-18).

The Court noted in the year between the defendant's plea and sentencing, the defendant had made significant life changes, including: (1) getting sober; (2) attending support groups; (3) finding gainful employment; (4) getting engaged, and (5) "assuming the role of 'de facto' father to his girlfriend's child." Rivera, 249 N.J. at 299 (citing Jaffe, 220 N.J. at 116-17). Although the

sentencing court had indicated it "did not accept defendant's claims that he had changed his life," the Court could not infer that defendant's post-offense evidence had been fully considered based on the court's statement it could not accept such evidence. Jaffe, 220 N.J. at 124.

Here, the record shows the sentencing court considered defendant's post-offense evidence with regard to mitigating factors eight, whether the circumstances that resulted in defendant's conduct has or is likely to recur, nine, defendant's character and attitude, and ten, his response to probationary treatment. See N.J.S.A. 2C:44-1(b)(8) to (10).

We also reject defendant's contention that the sentencing court failed to find mitigating factors based on his "actively working on maintaining his sobriety" between the plea allocution and sentencing hearing. Here, the sentencing court accepted evidence of defendant's post-offense conduct and found:

> [Defendant] is [thirty] years old. He's a high school graduate[]. He's completed the [twelfth] grade. He's single, does not have any children, he's presently unemployed and has a history of substance abuse having to do with heroin, prescription drugs, cocaine, marijuana and alcohol. . . . [D]efendant has attempted treatment in the past with limited success.

We therefore conclude the evidence in the record does not support a finding of mitigating factors eight, nine, and ten because defendant's criminal history is intertwined with his substance abuse history. And, despite defendant's "active work" on maintaining his sobriety in the three years between the plea and the sentencing, he reported "daily recent use of heroin and marijuana[] [and] the occasional recent use of alcohol." Therefore, the post-offense evidence indicates the circumstances that resulted in defendant's criminal conduct is likely to recur, he has not made significant life changes, and he had limited success with probationary treatment.

Finally, defendant argues the sentencing court undervalued mitigating factor twelve and assigned undue weight to aggravating factors three, six, and nine. Specifically, defendant claims the court "merely enumerated the factors" and "failed to provide any insight into [his] qualitative analysis." We are unpersuaded.

A sentencing court must "balance those relevant aggravating and mitigating factors by qualitatively assessing each factor and assigning it appropriate weight given the facts of the case at hand." Rivera, 249 N.J. at 298. However, a court need not qualitatively assess each factor individually. Rather, a qualitative analysis merely requires a sentencing court to "provide 'a careful

and deliberate analysis,'" which is "grounded in 'a thorough understanding of the defendant and the offense.'" Ibid. (quoting Fuentes, 217 N.J. at 71). So long as the sentencing court provides an adequate analysis, the court may succinctly enumerate the relevant factors and assign each factor's respective weight separate from its analysis. "[T]he weight to be given to [each] factor is within the sentencing court's discretion." Id. at 290.

Mitigating factor twelve provides a sentencing court may consider post-offense the defendant's willingness "to cooperate with law enforcement authorities." N.J.S.A. 2C:44-1(b)(12). The weight of the factor is determined by the benefit defendant's cooperation affords the State. See State v. Read, 397 N.J. Super. 598, 613 (App. Div. 2008). A confession, absent identifying other perpetrators or assisting in solving other crimes, is "not entitled to any substantial weight." Ibid. In contrast, a defendant's testimony that "seals" a case against another defendant is entitled to substantial weight. See State v. Henry, 323 N.J. Super. 157, 166 (App. Div. 1999). In Henry, where the sentencing court effectively ignored defendant's cooperation with the police by testifying honestly before a jury in the case of another defendant, we held defendant's cooperation "should have been a strong mitigating factor." Ibid.

> The prosecutor praised [the] defendant's cooperation with the police. He described [the defendant] as

> "cooperative". (sic) He said [the defendant] showed no "disrespect to the police" and "answered the questions." The detective involved, the prosecutor said, "had nothing but good things to say about" [the] defendant. Further, the prosecutor said [the] defendant "sealed" the case against [co-defendant] . . . .
>
> [Ibid.]

Here, like in Henry, the prosecutor recommended the finding of mitigating factor twelve and asserted without defendant's cooperation, McCarraher "would not have been apprehended" and the prosecutor's "office would not [have been] in a position to prosecute." The sentencing court attributed substantial weight to mitigating factor twelve. The court duly found the aggravating factors outweighed the mitigating factor and provided sufficient reasons for its findings.

We therefore conclude that the court complied with the sentencing guidelines and defendant's sentence represents a reasonable exercise of the court's sentencing discretion. We reject defendant's contention that resentencing is required.

Affirmed.