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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-3414-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PEDRO J. GOMEZ,

Defendant-Appellant.

Submitted May 9, 2017 – Decided May 31, 2017

Before Judges Fisher and Moynihan.

On appeal from the Superior Court of New
Jersey, Law Division, Salem County, Indictment
No. 14-12-0674.

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

John T. Lenahan, Salem County Prosecutor,
attorney for respondent (Derrick Diaz,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant pleaded guilty to third-degree possession of a
controlled dangerous substance, N.J.S.A. 2C:35-10a, following the

denial of his motion to suppress evidence. He appeals the denial of the motion, contending:

I. BECAUSE THE CONFIDENTIAL INFORMANT'S TIP LACKED THE REQUISITE BASIS OF KNOWLEDGE TO PROVIDE REASONABLE SUSPICION TO STOP MR. GOMEZ'S CAR, THE EVIDENCE MUST BE SUPPRESSED.

We disagree and affirm.

At the hearing, Detective Petrutz, who the trial court found to have extensive training and experience in the investigation of offenses related to controlled dangerous substances, testified that he received two telephone calls from an informant. The informant advised the detective during the first call that a Hispanic man, driving a silver, four-door Ford, was going to deliver heroin to the Pilot Truck Stop at 11:15 a.m. In the second call, the informant described the man as: approximately five feet, seven inches tall, 130 pounds, with brown eyes, black hair, long braids and various tattoos. The informant also said the man would be wearing a pink baseball cap, a pink shirt and blue jeans.

The detective set up a surveillance location at the truck stop; the informant was also present. Petrutz described the truck stop as a high crime area known for prostitution, narcotics and weapons possession. When a silver Ford entered the truck stop at approximately 11:15 a.m., the informant confirmed that the driver,

the defendant, was the same person he previously described to Petrutz.

A passenger exited the Ford and began to look around the parking areas. Petrutz believed he was conducting counter-surveillance to detect the presence of law enforcement. The passenger subsequently walked to the truck stop convenience store. Defendant also left the vehicle and walked toward the store. He met the passenger as he left the store and, together, they walked back to and entered the car. Neither was observed in possession of any packages, nor did they did buy gas.

The detective approached the suspect vehicle in his police unit with his overhead lights activated. The detective admitted the lights were a signal to defendant that he was not free to leave. The detective asked the driver to exit the vehicle. Defendant complied; a search ensued. The drugs with which defendant was charged were discovered during the search.

Our standard of review gives deference to the trial court's findings of fact, "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (citations omitted). "Those findings warrant particular deference" because of the perspective the judge gains from seeing and hearing testimony and the judge's "feel" for the case. Ibid. "[W]e may only consider whether the motion to

suppress was properly decided based on the evidence presented at that time." State v. Jordan, 115 N.J. Super. 73, 76 (App.Div.), certif. denied, 59 N.J. 293 (1971).

Our analysis of the propriety of the investigatory stop balances the competing interests between "a citizen's privacy and freedom of movement" and "proper law enforcement activities." State v. Davis, 104 N.J. 490, 504-05 (1986). Investigative stops are justified, even absent probable cause, "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." Id. at 505. Courts are to determine whether the totality of the circumstances gives rise to an "articulable and particularized" suspicion of criminal activity, not by use of a strict formula, but "through a sensitive appraisal of the circumstances in each case." Ibid.

In performing a stop, a law enforcement officer cannot act on a mere hunch. State v. Gamble, 218 N.J. 412, 428 (2014). "[T]he level of suspicion required is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." Ibid. (citation omitted).

The law enforcement officer's perspective is a factor in assessing whether a reasonable, articulable suspicion is established. State v. Nishina, 175 N.J. 502, 511 (2003). We consider if the totality of the circumstances known to the officer, in light of his or her experience and knowledge, taken together with "rational inferences drawn from those facts," justify the limited restriction on an individual's liberty during an investigatory stop. Davis, supra, 104 N.J. at 504.

A tip from a confidential informant can establish reasonable suspicion. An informant's tip is also analyzed under the totality of the circumstances. State v. Smith, 155 N.J. 83, 92, cert. denied, 525 U.S. 1033, 119 S. Ct. 576, 142 L. Ed. 2d 480 (1998). "Two factors generally considered to be highly relevant, if not essential, that are included in the 'totality of the circumstances' are the informant's 'veracity' and the informant's 'basis of knowledge.'" Id. at 93 (citing Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983)). The Smith Court adopted the flexible analysis espoused in Gates:

[N]either of these factors, though relevant, is an essential element under the totality of the circumstances test . . . [A] deficiency in one of the . . . factors "may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.

[Ibid. (citation omitted).]

The evidence relating to both factors establishes that the informant's tip to Petrutz was sufficiently reliable to justify the investigatory stop.

An informant's veracity can be established by providing reliable information to law enforcement. Id. at 93-94. Petrutz "used" this informant on seven prior occasions. Each tip resulted in an arrest; the detective did not know if any of the arrests led to convictions. The informant's veracity was not diminished because Petrutz did not provide details about the informant's previous tips. Our Supreme Court has "in the past accepted a similarly undetailed endorsement of an informant as satisfying the veracity requirement." State v. Novembrino, 105 N.J. 95, 123 (1987) (citation omitted).

The informant's basis of knowledge was not revealed; it can be established, however, not only by "direct evidence of the manner in which the informant learned of the criminal activity" but, also, "by a prediction of hard-to-know future events." State v. Williams, 364 N.J. Super. 23, 34-35 (App. Div. 2003).

We agree with the trial judge that State v. Birkenmeier, 185 N.J. 552 (2006), is analogous to this case. The confidential informant in Birkenmeier gave police:

defendant's name; defendant's address;
defendant's physical description; the make,

model and license tag number of defendant's car; the fact that defendant would be leaving his home at 4:30 p.m. to make a marijuana delivery; and the fact that defendant would be carrying the drugs in a laundry tote bag.

[Id. at 561.]

The Court held that the information supplied by the informant was sufficient to give rise to a reasonable and articulable suspicion to justify a stop after it was corroborated. Ibid.

The information contained in the tip to Petrutz was not as specific as that provided by the informant in Birkenmeier. The tip did not provide the defendant's name, the model and plate number of the vehicle, or the type of container in which the drugs would be packaged for transportation.


Petrutz did, however, corroborate the color and make of the vehicle, as well as defendant's race, sex, height and the articles of clothing described by the informant. While that information may not be "hard to know," the time defendant entered the truck stop and the description of defendant's distinctive pink hat and shirt are details that establish the informant's familiarity with the defendant and his criminal activity. Significantly, the informant also positively identified defendant and the vehicle at the scene.

An additional factor that must be taken into account is the seasoned detective's knowledge that the truck stop was an area rife with drug activity.¹

This was not an anonymous tip. Information was provided by a proven informant to an experienced detective. That information was corroborated by the detective and the informant. Once the informant's tip was corroborated, Petrutz had reasonable suspicion to conduct a stop to further investigate criminal wrongdoing.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

¹ We do not give any weight to the detective's conclusion that the passenger alighted from the car and conducted counter-surveillance of the area. The trial judge found the detective's conclusion that the passenger's actions were more "than just a casual look around" to be "a stretch."