

**NOT FOR PUBLICATION WITHOUT THE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-0378-17T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DEIDRE DAVIS,

Defendant-Respondent.

Submitted January 17, 2018 – Decided February 14, 2018

Before Judges Fuentes, Manahan, and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No. 16-
06-1223.

Joseph D. Coronato, Ocean County Prosecutor,
attorney for appellant (Samuel Marzarella,
Chief Appellate Attorney, on the brief).

Joseph E. Krakora, Public Defender, attorney
for respondent (Rebecca Gindi, Assistant
Deputy Public Defender, of counsel and on the
brief).

PER CURIAM

Following leave to appeal, the State appeals from a June 28,
2017 order that granted a motion by defendant Deidre Davis to

suppress evidence. We reverse the suppression order and remand to the trial court for proceedings consistent with our decision.

In June 2016, defendant¹ was indicted in Ocean County on three counts of third-degree possession of controlled dangerous substances that included heroin, oxycodone, and alprazolam, N.J.S.A. 2C:35-10(a)(1) (Counts One, Four and Six); three counts of third-degree possession with the intent to distribute controlled dangerous substances, N.J.S.A. 2C:35-5(b)(3) (Counts Two, Five and Seven); and one count of third-degree distribution of a controlled dangerous substance (heroin), N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3) (Count Three).

Defendant's motion to suppress evidence was granted on June 28, 2017. The State contends the trial court erred because the evidence was seized based on a valid search that followed from an investigatory stop based on reasonable, articulable suspicion. We gather the following facts from the record developed at the suppression motion.

At about 2:30 a.m. on February 27, 2016, Officer Scott Keefe of the Lacey Township Police Department was in his patrol vehicle when he received a radio transmission from the police dispatcher

¹ Two other co-defendants were charged in the nine-count indictment. The co-defendants are not parties to this appeal.

that there was a "possible drug transaction taking place" in the female bathroom of the Wawa near Taylor Lane. The Wawa store manager had called the police to report she saw a Caucasian woman hand money to an African American woman in the female bathroom of the Wawa, and then both women exited the bathroom. The Caucasian woman then approached a Caucasian male and left the Wawa with him, walking south on Route 9. The manager saw the African American woman get into a vehicle that had two other occupants, a woman and a man, both African American. She provided a description of the vehicle and the license plate number.

Officer Keefe was patrolling on Route 9 southbound when he received the call from the dispatcher. He went directly to the Wawa and arrived "pretty quick." The Wawa was on Route 9 adjacent to Taylor Lane. As Keefe drove through the intersection of Route 9 and Taylor Lane, he observed a vehicle, matching the provided description, stopped at the light. Keefe also observed that the three occupants of the vehicle were "two black females and one black male". Given these observations, Keefe positioned his vehicle behind the suspect vehicle and confirmed that it matched the description and the license plate given by the dispatcher. The vehicle made a left turn, proceeding north on Route 9. Keefe

activated his lights and when the vehicle did not stop, he activated his siren. The vehicle eventually came to a stop.

The defendant was driving. Upon approaching the vehicle, Keefe identified himself and asked for defendant's vehicle credentials. Keefe advised defendant that police received a "call that a drug transaction had possibly taken place between possibly [defendant] and another white female."

Subsequent to the arrival of other officers, Officer Michael Verwey spoke with the other passengers. The male passenger in the backseat, later identified as Kevin Mack, initially provided false information about his identity. While speaking to Mack, Verwey "smelled the odor of marijuana coming from inside the car where he was seated." Verwey then requested that Mack exit the vehicle. After Mack exited the vehicle, Verwey observed a rolled-up dollar bill with a white powdery substance on it laying on the back seat where the male was sitting. The officer also smelled the odor of marijuana coming from Mack. Mack eventually provided his actual identity and admitted he had outstanding warrants, that he had smoked marijuana, and that he had marijuana under his genitalia. Mack was arrested and searched. The search yielded a large quantity of money, but defendant claimed it was hers.

The officers conducted a search of the vehicle based on the odor of marijuana, Mack's admitted use of it, and Verwey's observation of drug paraphernalia. The search revealed a bottle of unmarked pills in the center console as well as a bottle of prescription labeled pills in defendant's name. Upon examination of that bottle, the officers noted that the pills contained therein were two different types, including oxycodone. The search also revealed a quantity of cash on both Mack and defendant. Defendant was arrested.

Meanwhile, two other officers stopped the Caucasian female as she was walking south on Route 9. She admitted that she had purchased heroin from defendant.

The trial judge granted defendant's motion to suppress. The court found the officer stopped defendant's vehicle based on the tip from the Wawa manager who "merely witnessed an exchange of United States currency, and nothing more." The judge noted that what the manager observed was "legal activity" and that there was no evidence she had experienced a hand-to-hand transaction. The judge held that the police did not have a "specific and articulable set of facts to rely upon to justify the motor vehicle stop" because the officers were relying "solely on a report from a

concerned citizen . . . that two individuals exchanged cash in a Wawa bathroom, left the store, and one entered a vehicle and left."

The State timely moved for leave to appeal. Based on that motion, the trial court issued an "Amplification of a Prior Opinion" under Rule 2:5-1(b). In the Amplification, the judge took issue with the State's claim that the Wawa manager said the two females "immediately left" the Wawa, noting there was no testimony about how soon defendant exited the Wawa once she left the bathroom. The judge stated that "it [was] not unusual for more than one person to be present in a bathroom at 2:30 a.m. in a store that is open twenty-four hours per day." and that it was "speculation" that the exchange of money was a "patron-to-patron financial transaction." The judge noted that there was no testimony this was a high crime neighborhood or that "bathrooms were commonplace for drug transactions." The judge concluded the manager reported she only observed legal activity. Since neither the manager nor the dispatcher testified, the judge did not find the testimony by the State "was sufficiently credible."

On appeal, the State raises one argument for our consideration. The State argues that the investigatory stop of defendant's vehicle was validity predicated on reasonable,

articulable suspicion that defendant had just engaged in criminal activity. We agree.

II

"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. (quoting State v. Hathaway, 222 N.J. 453, 467 (2015)).

Here, the facts are not disputed. Whether those facts provided the police a reasonable, articulable basis to stop the Davis vehicle, is legal determination, not a factual one, to which we owe no deference. We disagree with the trial court that this was a constitutionally invalid investigative stop.

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 Terry² 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) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). The officer's "articulable reasons" or "particularized suspicion" is based on the officer's assessment of the totality of the circumstances. State v. Davis, 104 N.J. 490, 504 (1986).

Here, the stop was based on information relayed to the officer by a tip from the Wawa manager, a citizen eyewitness. "In determining the reliability of a tip, a court must consider an informant's 'veracity,' 'reliability,' and 'basis of knowledge.'" Stovall, 170 N.J. at 362 (quoting Alabama v. White, 496 U.S. 325, 328-29 (1990)). Where an ordinary citizen is the informant, "courts assume that the informant has sufficient veracity and

² Terry v. Ohio, 392 U.S. 1 (1968).

require[s] no further demonstration of reliability." Ibid. "There is an assumption grounded in common experience that such a person is motivated by factors that are consistent with law enforcement goals." Davis, 104 N.J. at 506. To determine the informant's "basis of knowledge", "the nature and details revealed in the tip may imply" that the knowledge of the criminal activity comes from a "trustworthy source." Stovall, 170 N.J. at 362.

This was not an anonymous tip; the manager gave her name and location. She relayed specific information that a drug transaction was in progress or had occurred. It was 2:30 a.m. The manager described the women involved, that money was handed from one person to another in the bathroom, that they both then left the bathroom and departed the Wawa separately. According to the manager, one woman drove away in a vehicle with two others, a man and a woman. The other woman was on foot with a male companion walking south on Route 9. The manager gave a description of the vehicle and its license plate number.

"In determining whether reasonable suspicion exists, a court must consider 'the totality of the circumstances- the whole picture.'" Id. at 361 (quoting United States v. Cortez, 449 N.J. 411 (1981)). The reliability of the tip is part of the totality of the circumstances analysis. Id. at 361-62.

In State v. Amelio, 197 N.J. 207 (2008), the defendant's seventeen-year old daughter reported to the police that her father was operating a vehicle while intoxicated. The Court held that the tip provided a "reasonable and articulable suspicion of an offense to support a constitutional motor vehicle stop by the police." 197 N.J. at 209. Although the Court said that "an anonymous tip, standing alone, is rarely sufficient to establish reasonable articulable suspicion of criminal activity," the tip of a "known person" was not viewed in the same way. Amelio, 197 N.J. at 212 (quoting Rodriguez, 172 N.J. at 127).

In State v. Zapata, 297 N.J. Super. 160, 174 (App. Div. 1997), we held that the police had "an articulable and reasonable suspicion" for an investigatory stop based on their independent corroboration of an anonymous tip to the police dispatcher that "several male Hispanics were in a tan Chevy with New York license plates that had been in Vinnie's Tavern parking lot. The anonymous caller stated that these men had been distributing cocaine." The tip further provided the license plate number of the van. We held that "the totality of the circumstances justified the investigatory stop" of the van. Ibid.

We are not persuaded that the factual scenario presented here is apposite to State v. Maryland, 167 N.J. 471 (2001), a case

relied on by defendant, where the Court reversed the denial of a suppression motion. There, the basis for stopping the defendant was an observation by the police that he shoved a brown paper bag into his waistband. The Court found the stop was based on a hunch by the police with no other facts to transfer their hunch into a suspicion. 167 N.J. at 488.

Nor are we persuaded by State v. Richards, 351 N.J. Super. 289 (App. Div. 2002), cited by the motion judge. In that case, unlike here, the defendant was stopped based on an anonymous tip that had no indicia of reliability.

In the instant matter, there was a detailed description by an identified citizen who suspected that a drug transaction occurred. This citizen-reporter provided a description of the transaction, the physical description of the participants and their movements after the transaction including specific details of the vehicle in which one participant left the WaWa.

Keefe corroborated the tip when he "quickly" arrived at the scene and observed a vehicle matching the description and confirmed the license plate. Given the information provided to the police and its corroboration, we conclude, as in Stovall and Zapata, the officer would have been derelict not to investigate the report of potential criminal activity. We further conclude that the stop

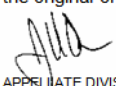
of the vehicle was reasonable in light of the attendant circumstances presented in that there was a reasonable articulable suspicion by police of criminal activity which implicated the vehicle.

Further, whether what the store manager observed in the bathroom of the WaWa at 2:30 a.m. was actually criminal activity is not dispositive of the legality of the motor vehicle stop. To be sure, police routinely receive reports from citizens of potential criminal activity that, upon investigation, reveal that no criminal activity has occurred. Those "negative" results however do not abrogate law enforcement's duty, under circumstances such as here, to investigate the reports.

As such, we are constrained to reverse the June 28, 2017 order, holding that the police executed a constitutionally valid investigatory stop of Davis' vehicle. Predicated upon the judge's holding that the stop of defendant's vehicle was not valid, the judge made no determination relative to the constitutionality of the subsequent warrantless search. Therefore, we remand to the Law Division for further proceedings on this issue.

Reversed and remanded for proceedings consistent with this decision. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION