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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-4655-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDY GUZMAN, a/k/a DAVID
GUZMAN,

Defendant-Appellant.

Submitted September 20, 2017 – Decided January 29, 2018

Before Judges Fuentes, Koblitz, and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
12-12-1881.

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

Christopher S. Porrino, Attorney General,
attorney for respondent (Anthony P.
Torntore, Deputy Attorney General, of
counsel and on the brief).

PER CURIAM

Defendant Andy Guzman appeals from his November 13, 2014 judgment of conviction. We affirm the conviction, but remand to determine whether he should receive additional jail credits.

Defendant was indicted in Bergen County for first-degree possession of a controlled dangerous substance with the intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(1) (count one); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count two); second-degree possession of a community gun while engaged in criminal activity, N.J.S.A. 2C:39-4(a)(2) (count three); second-degree possession of a firearm while committing a drug offense, N.J.S.A. 2C-39-4.1(a) (count four); second-degree burglary, N.J.S.A. 2C:18-2 (count five); fourth-degree possession of a prohibited weapon, N.J.S.A. 2C:39-3(f) (count six); and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b) (count seven).¹

After defendant's motion to suppress evidence was denied, defendant pled guilty to possession of a controlled dangerous substance with the intent to distribute (count one), and possession of a community gun (count three). The remaining counts of the

¹ Co-defendants Jorge Taveras and Omar Rios were each indicted on counts one through six. Co-defendants are not parties to the appeal.

indictment were dismissed. Defendant's plea preserved his right to appeal. See R. 3:5-7(d).

On November 7, 2014, defendant was sentenced to a twelve-year term of imprisonment with six years of parole ineligibility on count one, and a concurrent ten-year term with five years of parole ineligibility on count three. Defendant received 610 days of jail credit.

Defendant appeals, arguing the trial judge erred in denying his motion to suppress evidence and in calculating the number of jail credits. We gather the following facts from the record developed at the suppression motion.

I

Sergeant David Borzotta of the Bergen County Prosecutor's Office testified that on September 9, 2011, he supervised a meeting between Detective Jen Rueda and co-defendant Jorge Taveras in Teaneck while Rueda was negotiating, undercover, for the purchase of three kilos of cocaine. During the negotiation, Taveras placed a phone call to an unidentified male, but the drug deal could not be consummated at that time because of the unavailability of other participants. Also, the drugs were in Belleville. Taveras wanted to stay in contact with Rueda.

On September 13, 2011, at about 6:30 or 7:00 p.m., Borzotta supervised another meeting between Rueda and Taveras, this time

in North Arlington. Rueda negotiated a purchase of three kilos of cocaine for \$99,000. Although Borzotta believed the drug sale would occur there, Taveras changed the location to a specific address in Belleville. Borzotta directed a surveillance team of police to go to that location. Borzotta drove there in his unmarked vehicle.

The address was an auto-body shop located in a commercial area. It was closed at that hour but Borzotta could see a light in an upstairs window with the silhouette of another man standing there. Because he was not familiar with the area, Borzotta testified he parked too close to the actual address and was almost in front of it.

Borzotta saw two men exit the building, one of whom was Taveras, and the other was defendant. Borzotta did not recognize defendant. He observed the two men speak to each other briefly, and then they split up. Taveras walked to the corner of that street and Washington Avenue and then stood there. Defendant remained on the sidewalk in front of the designated address just at the drive way. Within a few minutes, defendant noticed Borzotta sitting in his vehicle. Borzotta testified defendant was looking at him repeatedly and then looking away, which Borzotta considered to be "suspicious." Borzotta radioed Detective Rothenberger to assist him, and when Rothenberger reached Borzotta's vehicle,

Borzotta stepped out. Borzotta testified he was going to approach defendant for an "interview."

As Borzotta stepped out of his vehicle, he saw defendant turn away in the direction of the address and rapidly begin to walk toward it. Defendant then discarded an object, which Borzotta believed to be drugs, and ran toward the building. As defendant began to run, Borzotta called out that he was with the police and for defendant to stop. Borzotta ran after defendant into the address, catching him at the top of an interior set of stairs, where he tackled defendant on the landing, and then placed him in custody. Borzotta noticed the black handle of a firearm on a desk just an arm's length away from another co-defendant, Omar Rios. Another officer, Detective Finch, secured that weapon, a Glock semi-automatic .40 caliber handgun, with a loaded magazine. Outside, Taveras was arrested.

In May 2013, defendant's motion to suppress evidence was denied. The court found Borzotta was a credible witness and that "based on the totality of the circumstances," there was probable cause to arrest defendant. Those circumstances included that Taveras was not acting alone, Borzotta observed defendant exiting with Taveras from the pre-arranged meeting location in Belleville, and defendant was making "furtive gestures." Defendant walked away quickly when he noticed Borzotta.

The court found the police had a reasonable suspicion that defendant was involved in selling drugs and had them on his person. The police were justified in entering the building and in arresting him under the exigent circumstances doctrine before evidence was destroyed or discarded. The court found the seizure of the gun once inside the building was authorized under the plain view exception. In addition, defendant had abandoned the cocaine by voluntarily discarding it.

On appeal, defendant raises the following issues:

POINT I

THE POLICE LACKED PROBABLE CAUSE WHEN THEY WENT TO ARREST DEFENDANT AND ALSO LACKED REASONABLE SUSPICION TO STOP HIM, AND, THUS, THE FRUITS OF THAT UNCONSTITUTIONAL WARRANTLESS ARREST (OR STOP) SHOULD HAVE BEEN SUPPRESSED.

POINT II

THE MATTER SHOULD BE REMANDED TO ADDRESS THE ISSUE OF JAIL CREDITS.

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)).

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).

² Terry v. Ohio, 392 U.S. 1, 16 (1968).

We disagree with defendant that this case is like State v. Williams, 410 N.J. Super. 549 (App. Div. 2009). In Williams, the police observed defendant riding a bicycle in a housing complex. When defendant saw them, he put his hand in his pocket and pedaled away. No other facts indicated the defendant was involved with drugs or drug sales. We found the police lacked an objectively reasonable basis to stop defendant based on these observations.

Nor is this case similar to State v. Tucker, 136 N.J. 158 (1994). There, the defendant was sitting on a curb when he saw the police and fled. As the police pursued him, he discarded packets, which contained cocaine. The Court found there was no reasonable, articulable basis for the police to stop the defendant merely because he fled when he saw the police.

Rather, this case is more like State v. Mann, 203 N.J. 328 (2010). There, the police were surveilling a known drug dealer, for whom they had an arrest and search warrant, when defendant drove up and had a brief conversation with the dealer. Defendant looked nervous after he saw the police and then ran into a nearby restaurant, with the police in pursuit ordering him to stop. The police apprehended the defendant in the bathroom as he was trying to flush the drugs in the toilet. The Court found that "the totality of the circumstances gave rise to a reasonable and articulable suspicion that defendant was engaged in criminal

activity" and that it was a combination of factors that justified the investigatory stop, not each factor by itself. Mann, 203 N.J. at 341. This justified the police in pursuing the defendant into the bathroom and the seizure of the drugs.

As in Mann, we are satisfied here that the totality of the circumstances provided a reasonable, articulable suspicion that defendant was about to engage in criminal activity. This was the location and time that had been set for the purchase of three kilos of cocaine. At least two men were involved with the proposed transaction, Taveras and someone else. Two men were present here. Borzotta testified that defendant was acting suspiciously. As soon as Borzotta stepped out of his vehicle, defendant fled and threw to the ground an object that Borzotta suspected was a kilo of cocaine. Borzotta identified himself and commanded defendant to stop, but defendant disobeyed. Borzotta then was justified in pursuing defendant into the building and seizing the kilo that he had discarded. Borzotta then had probable cause to arrest defendant and seize additional evidence.

We affirm the trial court's denial of defendant's suppression motion. Defendant's remaining arguments regarding the suppression motion lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Defendant contends he is entitled to additional jail credits for the time after he finished his federal sentence on October 2, 2014, and before he commenced his state sentence on November 7, 2014.


Rule 3:21-8(a) provides that "[t]he defendant shall receive credit on the term of a custodial sentence for any time served in custody in jail or in a state hospital between arrest and the imposition of sentence." Jail credits are "day-for-day credits," that are "subtracted from the original sentence." Buncie v. Dep't of Corr., 382 N.J. Super. 214, 217 (App. Div. 2005). "When the Rule preconditions for the application of jail credits are satisfied, the award of such credits is mandatory, not discretionary." State v. Rawls, 219 N.J. 185, 192 (2014) (quoting State v. Hernandez, 208 N.J. 24, 37 (2011)).

We agree with defendant that there must be a remand to determine if he received all the jail credit to which he was entitled. That said, the review is to determine if defendant is entitled to additional, not fewer, jail time credits. We previously denied the State's cross-motion to press its claim that defendant was awarded too many jail credits, without filing a cross-appeal.

Affirmed, but remanded to determine whether defendant is entitled to additional jail credits and for any necessary

correction of the judgment of conviction. 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