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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1065-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MELVIN PERALTA, a/k/a
MELVIN MIGUEL PERALTA
and LEONARDO RODRIGUEZ,

Defendant-Appellant.

Submitted March 29, 2022 – Decided November 9, 2022

Before Judges Fisher and Smith.

On appeal from the Superior Court of New Jersey,
Law Division, Somerset County, Indictment No. 16-
01-0036.

Benedict and Altman, attorneys for appellant (Philip
Nettl, on the brief).

Thomas J. Chirichella, Acting Somerset County
Prosecutor, attorney for respondent (Amanda Frankel,
Special Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

The opinion of the court was delivered by
SMITH, J.A.D.

Defendant was charged by a grand jury with possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5(a)(1). He filed a motion to suppress, alleging that police seized evidence from him through an improper warrantless search. The trial court denied the motion. Subsequently, defendant pled guilty to the charge, and as part of a plea agreement, the court sentenced him to a five-year term of incarceration without parole, concurrent to other federal and state sentences he was serving. Defendant appeals, arguing that the trial court erred when it denied his motion to suppress physical evidence without a warrant. We agree, and for the reasons that follow, we reverse the trial court's order and vacate defendant's guilty plea and sentence.

I.

The suppression hearing took place on May 23, 2019. Detectives Selim Senel, George Ramos, and Detective-Sergeant Michael Guerra testified. The court found the testimony of the detectives to be credible, and their testimony revealed the following pertinent facts.

On November 18, 2015, the Somerset County Prosecutor's Office Organized Crime and Narcotics Task Force received information from the

United State Drug Enforcement Administration ("DEA") about a federal investigation which had ties to Somerset County. The Indiana-based investigation led to a seizure there of significant amounts of methamphetamine. DEA's follow up led federal agents to New Jersey, where they learned that a New Brunswick address and a white Infiniti SUV could be connected to their investigation. Eventually, the federal agents monitoring the New Brunswick address observed a white Infiniti SUV depart and travel to Ralph Street in Franklin Township. The DEA, short on human resources to pursue the Franklin Township lead, requested assistance from the Somerset County Task Force detectives in surveilling Ralph Street.

On November 18, 2015, Det. Senel led a team of "twelve to thirteen" Task Force officers to conduct surveillance on Ralph Street, where they located the white Infiniti. Unmarked police vehicles carrying Task Force members quietly parked, lights off, on Ralph Street and surrounding streets. Det. Senel was the detective in charge of the surveillance operation. He testified that the DEA did not provide them with a street address on Ralph Street, so they did not have a specific property to watch. The DEA also did not provide the Task Force with the names of any persons suspected of a crime, so the Task Force did not know who they were looking for. Their

assignment from the DEA was surveillance: identify the Ralph Street property from which persons exited to approach the white SUV and identify any persons in the vehicle.

As the Task Force police officers watched and waited, the SUV remained parked on Ralph Street with its windows down for approximately an hour. Det. Senel testified that he observed no suspicious activity during that time. During that same time a detective went for a closer look into the SUV and spotted a male sleeping in the vehicle.

Eventually, the surveillance team observed two men exit one of the Ralph Street houses. Det. Senel saw the two men approach the SUV, with one holding a bag. He did not see the two men engage in any suspicious activity while they were walking to the car. One of the men, co-defendant Guillermo De Los Santos, entered the vehicle and sat in the driver's seat. The other man was defendant, who stood toward the rear of the car on the driver's side, talking to De Los Santos. Det. Senel testified that once the two men reached the car, only "seconds" elapsed before he gave the "take down" order. At that moment, a wave of Task Force officers rushed the car wearing ballistic vests marked with the word, "Police," or "DEA." Their weapons were holstered. The officers split up to surround the three men in or near the car. Det. Senel

described the men, including defendant, as "surprised" when the officers overtook and restrained them. Det. Senel saw Det. Ramos pull De Los Santos from the driver's seat and physically restrain him. Det. Senel also saw Det. Sgt. Guerra approach and physically restrain defendant.

Det. Guerra also testified at the suppression hearing. He stated that he was assigned to the Franklin Street Crimes unit. On the day of the incident, he was instructed to report to Ralph Street to provide support to the case agent, Det. Senel. His understanding was that he was not to conduct surveillance, but to "stage" the area, in case Det. Senel's team needed him. Between 10:30 and 11:30 p.m. he received a call to approach a white-colored Infiniti where two subjects were standing next to it. He testified on cross-examination that his purpose in approaching defendant was to "detain [defendant] . . . to further Det. Senel's investigation."

Det. Guerra didn't know the names of the subjects, nor was he provided such information by fellow officers before he got the call to approach the car. He walked quickly, with his gun holstered, towards the person standing near the rear of the vehicle, who turned out to be defendant. Det. Guerra identified himself to defendant as a police officer and told him there was a narcotics

investigation under way. The detective testified that defendant appeared surprised but calm at the moment of the approach.

Det. Guerra testified that, for his safety, he ordered defendant to remove his hands from his pockets. According to the detective, defendant responded to this command by saying, "I got something on me," and removed his hand from his pocket. Defendant held a clear plastic bag with a white-powdered substance. Defendant handed over the bag to Det. Guerra and the detective read him his Miranda¹ rights and handcuffed him. Det. Guerra wrote no report of his encounter with defendant, stating that he had been instructed by superiors not to do so, because Det. Senel would write the report.

On January 14, 2016, a Somerset County grand jury returned a four-count indictment. Count four charged defendant with possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5(a)(1). On March 21, 2019, defendant filed a motion to suppress, which the trial court denied. On July 31, 2019, defendant entered into a plea agreement in which he agreed to plead guilty to count four of the indictment in exchange for a recommended sentence of five-years' incarceration with no parole, concurrent to sentences defendant was already serving as a result of other convictions in state and federal court.

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

On September 25, 2019, the trial court sentenced defendant in accordance with the plea agreement.

Defendant appeals, arguing the following points:

I. Defendant's warrantless detention violated his rights under the Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey constitution, and thus, the trial court erred in denying defendant's Motion to Suppress.

A. The seizure of Defendant, even if treated as an investigative detention, was not based on reasonable, articulable suspicion of criminal activity.

B. The testimony of the officers established that Defendant had been functionally arrested prior to the seizure of evidence, and the arrest was unsupported by probable cause.

II.

In reviewing a motion to suppress, we defer to the factual and credibility findings of the trial court, "when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). Deference is afforded "because the 'findings of the trial judge . . . are substantially influenced by his [or her] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J. 154,

166 (2015) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). "An appellate court should disregard those findings only when a trial court's findings of fact are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). Legal conclusions to be drawn from those facts are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022); Hubbard, 222 N.J. at 263.

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect individuals from unreasonable searches and seizures. Not all encounters between police and citizens, however, constitute a search or seizure. State v. Rodriguez, 172 N.J. 117, 125 (2002). A police officer may "initiate[] a field inquiry by approaching an individual on the street, or in another public place, and 'by asking him [or her] if he [or she] is willing to answer some questions[.]'" Id. at 126 (fourth alteration in original) (quoting State v. Davis, 104 N.J. 490, 497 (1986)). "[A]n officer would not be deemed to have seized another if his questions were put in a conversational manner, if he did not make demands or issue orders, and if his questions were not overbearing or harassing in nature." Davis, 104 N.J. at 497 n.6.

In contrast, when an objectively reasonable person would feel that his or her right to move has been restricted, the encounter becomes more than a field

inquiry. Id. at 498. Thus, if a police officer makes an investigatory stop or detains a person, the officer must have "specific and articulable facts which, taken together with rationale inferences from those facts," give rise to a reasonable suspicion of criminal activity. State v. Legett, 227 N.J. 460, 472 (2017) (quoting Rodriguez, 172 N.J. at 126). If a police officer has such reasonable articulable suspicion, then the officer can conduct a lawful investigatory stop and such a stop is a recognized exception to the warrant requirement. State v. Coles, 218 N.J. 322, 342-43 (2014).

The burden is on the State to show by a preponderance of the evidence that it possessed sufficient information to give rise to the required level of suspicion. State v. Pineiro, 181 N.J. 13, 19-20 (2004). That reasonable suspicion standard requires "some minimum level of objective justification for making the stop." State v. Amelio, 197 N.J. 207, 211-12 (2008) (quoting State v. Nishina, 175 N.J. 502, 511 (2003)). "The principal components of a determination of reasonable suspicion . . . [are] the events which occurred leading up to the stop . . ., and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to a reasonable suspicion" State v. Stovall, 170 N.J. 346, 357 (2002)

(alteration in original) (quoting Ornelas v. United States, 517 U.S. 690, 696 (1996)).

In determining whether reasonable suspicion exists, a reviewing court should consider "the totality of the circumstances." State v. Gamble, 218 N.J. 412, 431 (2014) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)).

III.

Defendant argues that the trial court erred in finding that a reasonable articulable suspicion existed to justify the investigatory stop of defendant. In its written statement of reasons, the court recited the facts Det. Senel testified to in detail. The court cited: the original DEA tip; the Task Force's location of the white SUV on Ralph Street and its hourlong surveillance; the observation of the sleeping passenger; the observation of the two men leaving a Ralph Street residence to walk up to the car; and a conversation between defendant and the De Los Santos. The court concluded that "[t]he rational inferences . . . drawn from those facts are that [d]efendant was involved in suspected drug activity. The [c]ourt finds that the Task Force had reasonable articulable suspicion to stop [d]efendant."

This was not a field inquiry. Rodriguez, 172 N.J. at 126. There were no conversational questions, and Det. Guerra clearly issued at least one order to

defendant. This was an investigatory stop. As such, the officers conducting such stops required a reasonable and articulable suspicion in order to proceed.

We note the presence of the following facts in the record not present in the trial court's written analysis of the investigatory stop. Det. Senel testified that his assignment from the DEA was surveillance. Det. Guerra testified that he did not go to the scene to conduct surveillance, rather he was there to "detain." Both Det. Guerra and Det. Senel admitted they didn't know who Det. Senel was looking for on Ralph Street. Det. Senel stated that he observed no suspicious activity in the moments he saw defendant and De Los Santos emerge from a residence and walk towards the white Infiniti. Despite seeing no suspicious activity, Det. Senel gave the "take down" order to his team "seconds" after defendant reached the car. When Det. Guerra sprang from his car, he did so on Det. Senel's command, not based on any suspicious act he saw defendant commit. A reasonable inference to be drawn from the testimony of the State's witnesses is that Det. Senel and members of his surveillance team had predetermined that they would detain anyone walking towards the white Infiniti, whether they were engaged in suspicious activity or not.

When we examine the totality of the circumstances leading to defendant's stop, we cannot conclude that there were sufficient facts in the record to cause an objectively reasonable police officer to have an articulable suspicion of defendant sufficient to stop him at the car. Stovall, 170 N.J. at 357. When Det. Senel gave his order to "take down" defendant, the police officers didn't know who he was, and they hadn't seen him engage in any suspicious activity. Indeed, it is reasonable to conclude from this record that the Somerset County Task Force's primary assignment was to acquire such information for the DEA.

After concluding the investigatory stop was valid, the trial court also found probable cause. It concluded that the contraband seized from defendant was either the result of defendant's "voluntary surrender," or the product of a search incident to a valid arrest. Because we find the police had no reasonable articulable suspicion to justify the stop, our inquiry ends, and we do not address this aspect of the trial court's order.

Reversed. Defendant's guilty plea and sentence are vacated, and the matter is remanded for proceedings consistent with this opinion.

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



CLERK OF THE APPELLATE DIVISION