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ADVANCE SHEET HEADNOTE
April 25, 2022

2022 CO 19

No. 21SA330, *People v. Moreno* – Searches and Seizures – Grounds for Stop or Investigation – Reasonableness; reason or founded suspicion, etc.

In this interlocutory appeal of a suppression order, the Colorado supreme court considers whether the trial court erred when it found that the police lacked reasonable articulable suspicion to support an investigatory stop. In this case, the officers' explanation for the contact included a problematic but detailed and corroborated tip, the defendant's strange behavior at a gas station, his hypervigilance, and his interaction with people identified in the tip as drug traffickers. Therefore, the Colorado supreme court now holds that, under the totality of the circumstances the officers had reasonable suspicion to conduct the stop. Accordingly, the Colorado supreme court reverses the trial court's order suppressing evidence obtained from the search and remands for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 19

Supreme Court Case No. 21SA330
Interlocutory Appeal from the District Court
Larimer County District Court Case No. 21CR746
Honorable Stephen J. Jouard, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Marcelino Andrade Moreno.

Order Reversed

en banc

April 25, 2022

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CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court in which **JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE BOATRRIGHT delivered the Opinion of the Court.

¶1 In this interlocutory appeal of a suppression order, we consider whether the trial court erred when it found that the police lacked reasonable articulable suspicion to support an investigatory stop. We hold that, under the totality of the circumstances, the officers had reasonable suspicion to conduct the stop. We therefore reverse the trial court’s order suppressing evidence obtained from the search and remand for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶2 In January 2021, the Northern Colorado Drug Task Force (“NCDTF”) received an anonymous tip that claimed two residents of a home in Berthoud were dealing a variety of drugs, including methamphetamine. The tip provided specific information: (1) the address of the house, and that it was the “corner house behind habitat for humanity”; (2) a physical description of the residents, along with their names and phone numbers, and information that they were a husband and a wife who “sell fentanyl out of their home”; (3) that the couple’s vehicle was a white GMC Acadia SUV; and (4) that the couple sold “mainly fentanyl pills” as well as “Oxy blue 30s [and] meth” that were “[k]ept in his bedroom . . . in the nightstand across from the bed” and were sold “all different ways” but mainly “from his mailbox.”

¶3 NCDTF did not act on this information for three months. At that point, NCDTF placed the home under surveillance and confirmed that the people named in the tip still resided at the listed address. The surveilling officer saw a woman, who matched the physical description of the wife in the tip, doing yard work. She went in and out of a small garden shed on the property where she brought out typical gardening tools. Soon, a man who matched the tip's description of the husband, arrived at the home in a white GMC Acadia SUV, the same make and model of the vehicle described in the tip, and went inside the home.

¶4 Several hours into the surveillance, the officer observed an unknown man, later identified as Marcelino Moreno, arrive at the house in a pickup truck driven by a woman. Moreno exited the car, hugged the husband, and followed him into the shed where the wife had obtained gardening tools. When the two emerged, neither of them carried any tools that might be found in a shed. The officer observed that both men seemed to be "very conscious of their surroundings, looking over their shoulders, [and] looking up and down the street" as they returned from the shed. Further, the officer noted that as Moreno climbed back into the passenger seat of his truck and drove away, he frequently checked his mirrors and looked over his shoulder.

¶5 After Moreno left the house, a second officer followed his truck in a marked patrol car, while the first officer continued to surveil the house. The second officer

observed that Moreno was uncommonly fixated on his patrol car, later testifying that “Moreno’s actions far exceeded anything [he had] ever seen of an individual watching [his] car.” About twelve minutes into the drive, Moreno’s truck stopped at a truck stop and parked at a gas pump. The patrol car followed Moreno into the truck stop parking lot and parked in a far corner where the officer could observe Moreno from a distance. Moreno and the woman went into the truck stop, returned to sit in the vehicle for a short time, and then drove to another part of the parking area. At no point did they pump gas.

¶6 Next, the officer observed Moreno park next to an air compressor station. Moreno exited the car and grabbed the hose to the air compressor. But Moreno did not actually use the air compressor on any of the tires, nor did he bring the hose to the tires. Rather, Moreno held the hose and circled the vehicle for about five minutes, continually looking up and away from his vehicle, all the while still paying special attention to the patrol car.

¶7 A short while later, the first surveilling officer, still back at the residence, witnessed the husband and wife leave the house in their SUV. The officer followed the couple to the truck stop where Moreno was waiting. The couple pulled in next to Moreno, who exited his own truck carrying a black backpack and got into the backseat of the couple’s SUV, and the three drove off together. The second officer in the patrol car then stopped the SUV on suspicion of drug trafficking activity.

Together, the officers called a K9 officer, whose dog alerted to the presence of narcotics. Subsequently, the officers searched the backpack that Moreno had brought with him into the SUV and found approximately 460 grams of suspected methamphetamine and 13.3 grams of suspected fentanyl. After the search, one officer returned to the truck stop to see if Moreno's truck remained in the parking lot, but the truck and the woman were both gone.

¶8 The People charged Moreno with possession of controlled substances with intent to distribute. Before trial, Moreno moved to suppress the evidence seized from his backpack, contending that the officers lacked reasonable suspicion that he was involved in any criminal activity at the time of the traffic stop.

¶9 The trial court granted the motion. The court found that, because three months had passed from the time of the anonymous tip to the time of the officers' surveillance, the information contained in the tip was "stale" and there were "no intervening observations to corroborate suspected criminal activity." The court further found that, although the officers' observations "may have provided [them] with an intuition or hunch of criminal activity," they did not rise to the level of reasonable suspicion. Accordingly, the court suppressed all evidence obtained from the search of Moreno's backpack.

¶10 The People then filed this interlocutory appeal.

II. Jurisdiction and Standard of Review

¶11 Pursuant to C.A.R. 4.1 and section 16-12-102(2), C.R.S. (2021), the People may bring an interlocutory appeal under these circumstances. The People certified that they are not appealing for purpose of delay and that the suppressed evidence is a substantial part of the proof of the charges pending against Moreno.

¶12 “A trial court’s suppression order presents a mixed question of law and fact.” *People v. McIntyre*, 2014 CO 39, ¶ 13, 325 P.3d 583, 586. We defer to the trial court’s findings of historical fact if they are supported by competent evidence. *Id.* at ¶ 13, 325 P.3d at 587. However, we review the legal effects of those facts de novo. *Id.*

III. Analysis

¶13 We first discuss the relevant legal principles governing reasonable suspicion. We then apply those principles to the facts of this case and conclude that, under the totality of the circumstances, the officers had a reasonable suspicion to conduct the traffic stop. We therefore reverse the trial court’s order suppressing evidence obtained from the search and remand for proceedings consistent with this opinion.

A. Reasonable Suspicion Standard

¶14 The United States Constitution and the Colorado Constitution both protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV;

Colo. Const. art. II, § 7. Nevertheless, a police officer may conduct a brief investigatory stop without violating an individual's constitutional rights, so long as the officer can articulate "a reasonable suspicion of criminal activity." *People v. Brown*, 2019 CO 63, ¶ 10, 461 P.3d 1, 3 (quoting *People v. Ingram*, 984 P.2d 597, 603 (Colo. 1999)); see also *Terry v. Ohio*, 392 U.S. 1, 27, 30–31 (1968).

¶15 The reasonable suspicion standard requires "'obviously less' [proof] than is necessary for probable cause." *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). However, a police officer's notion of criminal activity must be more than a "mere generalized suspicion or hunch." *People v. Wheeler*, 2020 CO 65, ¶ 13, 465 P.3d 47, 52. Instead, the officer must have "a specific and articulable basis in fact for suspecting that criminal activity has occurred, is taking place, or is about to take place." *Brown*, ¶ 10, 461 P.3d at 3 (quoting *People v. Perez*, 690 P.2d 853, 855 (Colo. 1984)); see also *Terry*, 392 U.S. at 21–22 (explaining that inarticulate hunches violate constitutional rights). When determining whether a police officer articulated a reasonable suspicion, courts look for specific facts "'known to the officer,' which 'taken together with rational inferences from those facts,' gave rise to 'a reasonable and articulable suspicion of criminal activity' justifying the intrusion into the defendant's personal privacy." *Wheeler*, ¶ 13, 465 P.3d at 52 (quoting *People v. Funez-Paiagua*, 2012 CO 37, ¶ 9, 276 P.3d 576, 578–79).

¶16 This standard requires trial courts to consider the totality of the circumstances surrounding the investigatory stop. *Id.* When considering the totality of the circumstances, officers must articulate specific facts that support their belief of criminal activity and thus reasonably warrant an investigatory stop. *Brown*, ¶¶ 10–11, 461 P.3d at 3.

¶17 In their consideration, courts must keep “in mind that ‘[a]n officer is entitled to draw reasonable inferences from all the circumstantial evidence,’” even where such evidence may support other interpretations. *Id.* at ¶ 11, 461 P.3d at 3 (alteration in original) (quoting *People v. Threlkel*, 2019 CO 18, ¶ 20, 438 P.3d 722, 727). While no one factor is dispositive, we have previously provided some criteria relevant to this determination, including (1) the officer’s observations of the “activity by the particular person stopped” and (2) the officer’s “knowledge or suspicion that the person or vehicle stopped has been involved in some criminality of the type presently under investigation.” *Id.* (quoting *People v. Bell*, 698 P.2d 269, 272 (Colo. 1985)).

¶18 With these standards in mind, we now turn to the facts of this case.

B. Application

¶19 Moreno argues (and the trial court found) that because the anonymous tip was provided more than three months prior to the surveillance or any other intervening action, the information was stale. But while the possible staleness of

the tip is problematic and “is certainly a factor, it is not dispositive; instead, the totality of the circumstances must be considered.” *Id.* at ¶ 13, 461 P.3d at 3.

¶20 In this case, the officers testified that the anonymous tip was heavily detailed: In addition to stating that there was a large amount of in-and-out traffic, the informant provided the names and descriptions of the residents, as well as what types of drugs were being sold, where they were stored, and how they were sold. Although the information was three months old, the officers confirmed several facts from the tip such as the location of the house, the description of the residents, and the description of their car.

¶21 Further, the officers witnessed Moreno acting in a strange, hypervigilant manner throughout the time they surveilled him. Moreno greeted the husband and followed him into a small shed, emerging empty-handed and being hypervigilant to his surroundings. Moreno paid extraordinary attention to the patrol car, both when he drove away from the residence and when he arrived at the truck stop. Moreno continued to act strangely at the truck stop—first pulling up next to a gas pump without filling his gas tank, then moving to the air compressor and wandering around with the hose for several minutes but never filling his tires. And finally, Moreno reunited with the residents at the gas station, less than an hour after their initial interaction, and immediately got into their SUV while carrying a black backpack.

¶22 We conclude that “from all the circumstantial evidence” outlined above, the officers “dr[e]w reasonable inferences.” *See id.* at ¶ 11, 461 P.3d at 3 (quoting *Threlkel*, ¶ 20, 438 P.3d at 727). The details provided in the anonymous tip allowed them to identify the individuals described in the tip and then watch them interact with Moreno both at the house and when they reunited at the gas station. The officers observed nothing that produced a legitimate explanation for Moreno’s strange behavior at the truck stop, and none appears to have existed. In our view, the officers reasonably inferred that Moreno was merely trying to look like he was engaging in normal activities (pumping gas and filling his tires) before leaving his truck and joining the residents from the house in their car.¹

¶23 Accordingly, after considering the totality of the circumstances – including the detailed and corroborated tip, Moreno’s strange behavior, his hypervigilance,

¹ We note that this case is distinguishable from *People v. Revoal*, 2012 CO 8, ¶¶ 12, 15–19, 269 P.3d 1238, 1241, in which we held that an officer’s observations of the defendant’s strange behavior – including standing next to a closed restaurant in a high-crime area and wandering aimlessly across a parking lot while continually looking left and right – were insufficient to rise to the level of reasonable suspicion. Here, Moreno’s suspicious conduct was deliberate and supported by the corroborated evidence from a detailed anonymous tip alleging criminal activity. *See id.* at ¶ 15, 269 P.3d at 1241 (“[B]oth cases where the court found reasonable suspicion involved more deliberate, suspicious conduct supported by corroborating evidence.”).

and his interaction with the residents—we conclude that the officers had reasonable suspicion. To be sure, any one of these facts by itself would be insufficient to give rise to reasonable suspicion. But taken together, the facts and the rational inferences that could be drawn from them established reasonable suspicion to believe that Moreno was carrying illegal drugs. Under the totality of the circumstances, even though the evidence may support other interpretations of the facts, the officers’ explanation of the situation provided an articulable reasonable suspicion of criminal activity.

IV. Conclusion

¶24 We hold that, under the totality of the circumstances, the officers had reasonable suspicion to conduct the investigatory stop. We therefore reverse the trial court’s order suppressing evidence obtained from the search and remand for further proceedings consistent with this opinion.