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October 9, 2024

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LETTER BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0025-23
INDICTMENT NO. 22-07-00484-I

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the Superior Court
TARRANCE SAPP A/K/A	:	of New Jersey, Law Division,
TERRANCE SAPP,	:	Mercer County.
Defendant-Appellant.	:	Sat Below:
	:	Hon. Janetta D. Marbrey, J.S.C.

DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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¹ While the number 22-07-466-I appears on the indictment, all other documents in this case (judgment of conviction, presentence report, and transcripts) identify the indictment number as 22-07-00484-I.

PROCEDURAL HISTORY

On July 26, 2022, Mercer County Indictment No. 22-07-466-I² charged Defendant-Appellant Tarrance Sapp, in nine counts, with: possession of a gun without a permit and a large-capacity ammunition magazine under N.J.S.A. 2C:39-5(b)(1) and 2C:39-3(j); possession of cocaine and with intent to distribute and in a school zone and near a public facility under N.J.S.A. 2C:35-10a(1), 2C:35-5a(1), 2C:35-5b(2), 2C:35-7, 2C:35-7.1, and 2C:35-5b(1); possession of a gun during the commission of a drug crime under N.J.S.A. 2C:39-4.1a; and certain persons not to have a gun under N.J.S.A. 2C:39-7b(1) and 2C:39-7a(1). (Da1-9)³

On February 28, 2023, the Honorable Janetta D. Marbrey, J.S.C., heard argument on Mr. Sapp's motion to suppress the physical evidence seized during a warrantless search. (2T) The court denied the motion on April 24, 2023. (Da10-24)

² See footnote 1.

³ "Da" refers to the appendix to this brief.

The transcript volumes correspond to the following dates:

1T – July 26, 2022 (Grand Jury Hearing)

2T – February 28, 2023 (Motion to Suppress Hearing)

3T – April 24, 2023 (Plea Hearing)

4T – August 3, 2023 (Sentencing)

Mr. Sapp entered a conditional plea to second-degree possession of a gun without a permit, contrary to N.J.S.A. 2C:39-5(b)(1) (Count One). In accordance with the plea agreement, Judge Marbrey sentenced him to five years of incarceration with three-and-a-half years of mandatory parole ineligibility. (3T:6-13 to 21; Da27-30; 4T:16-7 to 17-3)⁴

A notice of appeal was filed on September 5, 2023. (Da31-34)

⁴ As part of the plea agreement, Mr. Sapp also pleaded guilty to a third-degree violation of his probation under Mercer County Accusation No. 17-10-618-A, and Judge Marbrey sentenced him to three-years' incarceration concurrent to the sentence imposed on the indictment. (3T:6-13 to 21; Da27-30; 4T:16-7 to 17-3) Mr. Sapp is not raising any issues related to this accusation.

STATEMENT OF FACTS

Suppression Hearing

At the suppression hearing, the State presented the testimony of one arresting officer, Trenton Police Department Detective Aaron Camacho, and played body-worn camera (“BWC”) footage of the motor vehicle stop from two detectives on the scene.

Detective Camacho testified that on May 12, 2022,⁵ he was on patrol with two other detectives in an unmarked police vehicle. (2T:8-22 to 9-22) A fourth detective drove “directly behind” them in a marked police vehicle with a drug-sniffing dog. (2T:9-23 to 10-5, 23-16 to 22)

Around 11:00 a.m., while the detectives were on patrol, they pulled over a Jeep they noticed “circling the area.” (2T:10-6 to 12, 11-2 to 4, 14-14 to 18; 43-21 to 44-21) Although Detective Camacho testified that the car had tinted front windows and a broken rear brake light (2T:11-6 to 24), the BWC footage corroborates neither traffic infraction. As for the broken brake light, footage of the rear of the car shows that no glass is broken, and the lights are not

⁵ There is a discrepancy as to what date this incident occurred. At different times before the grand jury, the State referenced both May 11 and May 12, a point of confusion for one grand juror. (1T:4-1 to 3, 19-8 to 17) The indictment states that the charged offenses occurred on May 12. (Da1-9) However, the BWC footage is dated May 11 in the upper-right-hand corner, and one detective clearly states on the video that the date was May 11. (Da25 at 13:22 to 13:30)

activated because the car is stopped. (Da25 at 00:35 to 00:40) And as for the tinted windows, Detective Camacho testified that the front driver's-side and passenger-side windows were tinted. (2T:11-10 to 11) By the time the video shows the driver's-side window, it is rolled all the way down. (Da26 at 00:32 to 00:36) And though the passenger-side window is up for the beginning of the traffic stop, the interior of the car is visible through the window. (Da25 at 01:05 to 01:08)⁶

The detectives approached the vehicle on both sides and began asking the driver, Mr. Sapp, questions. (2T:15-3 to 8, 17-3 to 11) Mr. Sapp handed his driver's license to a detective upon request. (2T:17-8 to 11)

As recorded on the BWC, Mr. Sapp explained to the detectives that he was on his way to work; to illustrate, he reached for an orange work vest from the backseat of the car, displayed it for the detectives, and then placed the vest in his lap as the conversation continued. (2T:18-2 to 15; Da26 at 01:50 to 02:00)

⁶ Detective Camacho initially testified that the driver also failed to use his turn signal. (2T:14-5 to 6) But on the video played at the hearing, a detective states that Mr. Sapp did in fact use his turn signal. (Da25 at 05:35 to 05:42) After the video was played at the hearing, Detective Camacho had to acknowledge that he must have been mistaken. (2T:45-7 to 11) The court elected not to consider this supposed traffic infraction in its analysis. (Da17)

The detectives ordered Mr. Sapp out of the car. (2T:18-24 to 19-1) When asked why the detectives did so, Detective Camacho testified: “He was ordered out of the vehicle due to his nervous behavior, due to his furtive movements, grabbing the safety vest, covering it over his waistband area. He was removed because we believed he was in possession of a weapon.” (2T:19-2 to 8) As Mr. Sapp exited his vehicle, he held the work vest in one hand by his side. (2T:19-14 to 16; Da25 at 02:30 to 02:35)

Within seconds of Mr. Sapp exiting the car, Detective Camacho frisked him. (Da25 at 02:15 to 02:40; Da26 at 02:05 to 02:35) Detective Camacho testified that, as Mr. Sapp complied with the detective’s order to place his hands on the car, he leaned against the trunk. (2T:20-2-3, 19 to 24) Detective Camacho found a handgun in Mr. Sapp’s waistband, which the detectives seized, and placed Mr. Sapp under arrest. (2T:20-4 to 8, 21-2, 21-9 to 24) After the arrest, the drug-sniffing dog positively indicated on the driver-side door panel, and the detectives found cocaine. (2T:24-1 to 8)⁷

In support of his motion to suppress evidence seized during this warrantless search, Mr. Sapp argued that there were no officer-safety concerns

⁷ At some point during this incident, Detective Camacho also noticed an open beer bottle in the driver-side door. (2T:17-12 to 18-1) However, the detectives did not administer a field sobriety test, nor did they issue Mr. Sapp a ticket for driving under the influence. (2T:54-5 to 11)

to justify ordering Mr. Sapp out of his car to frisk him, because Mr. Sapp was outnumbered by police officers four-to-one on a quiet road. (2T:72-4 to 16) Mr. Sapp also argued that, contrary to Detective Camacho's testimony, the BWC footage showed that Mr. Sapp did not behave nervously or hunch forward; Mr. Sapp leaned back in his car seat when not reaching for an item (such as his driver's license and work vest), his hands did not shake, he spoke at a normal cadence and speed, and he answered all of the detectives' questions directly. (2T:72-17 to 73-6, 73- 16 to 74-3; Da26 at 00:35 to 02:07)

The Court's Ruling

In its decision denying suppression, the court first found that Detective Camacho's testimony as to Mr. Sapp's tinted windows and broken rear brake light, coupled with the BWC footage, demonstrated reasonable suspicion to stop Mr. Sapp's vehicle. (Da16-17) The court next held that the detective's decision to frisk Mr. Sapp was reasonable, crediting Detective Camacho's testimony that Mr. Sapp "appeared to 'hunch over' in his seat attempting to conceal view of his waistline," "use[d] his safety vest to cover his waist," and "appeared to be nervous and reluctant to answer officers' questions." (Da20-21) The court also found that, as Mr. Sapp exited his car, he "held the safety vest in front of his waistband, and "laid the front of his body against the back of the vehicle to obstruct officers' view." (Da23) Last, the court held that the

dog sniff of Mr. Sapp's vehicle was constitutional, finding both that the sniff did not prolong the motor vehicle stop, and that Mr. Sapp had already been placed under arrest at the time of the sniff. (Da24)

Guilty Plea

At the plea hearing, Mr. Sapp acknowledged that he possessed a handgun without a permit on the day of his arrest and that by pleading guilty to this count of the indictment he had violated his probation. (3T:14-18 to 16-3)

LEGAL ARGUMENT

POINT I

THE COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE BECAUSE MR. SAPP WAS FRISKED ABSENT REASONABLE SUSPICION HE HAD A WEAPON. (Da10-24)

The trial court erred when it denied Mr. Sapp's suppression motion, both in its findings of fact and its conclusions of law. First, the court's factual findings that Mr. Sapp "hunched over" concealing his waistband and that he behaved nervously are directly contradicted by BWC footage played at the suppression hearing. Second and alternatively, even if this Court adopts the trial court's factual findings, the trial court's legal conclusion that Mr. Sapp's behavior amounted to reasonable suspicion he had a gun was erroneous, because nervousness and ambiguous "furtive" movements cannot establish reasonable suspicion on their own. Lastly, the court erred when it relied on Mr. Sapp's conduct after Detective Camacho had already decided to frisk Mr. Sapp in determining the frisk was reasonable, because that conduct was equally ambiguous.

When reviewing a motion to suppress, the appellate court defers to the trial judge's factual findings where "supported by sufficient credible evidence in the record." State v. Boone, 232 N.J. 417, 425-26 (2017) (quoting State v.

Scriven, 226 N.J. 20, 40 (2016)). Legal conclusions are reviewed de novo.

State v. Nyema, 249 N.J. 509, 526-27 (2022).

Under both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution, warrantless searches and seizures “are presumptively unreasonable and therefore invalid.” Id. at 527 (quoting State v. Elders, 192 N.J. 224, 246 (2007)). The State has the burden to prove by a preponderance of the evidence that a warrantless search or seizure “fell within one of the few well-delineated exceptions to the warrant requirement.” Ibid. (internal quotations omitted).

According to the State, the relevant exception here is a Terry frisk.⁸ The Terry Court recognized “a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual.” 392 U.S. 1, 27 (1968). The purpose of a frisk “is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” Adams v. Williams, 407 U.S. 143, 146 (1972). A frisk must be based on a reasonable articulable suspicion that a suspect is armed. State v. Privott, 203 N.J. 16, 29-30 (2010) (explaining that police may conduct “a limited pat-down for weapons where a reasonably prudent officer would be justified in the

⁸ Terry v. Ohio, 392 U.S. 1 (1968).

belief, based on ‘specific and articulable facts[,]’ . . . that the person is armed and dangerous” (alteration in original) (quoting Terry, 392 U.S. at 21)).

Determining whether reasonable suspicion exists is “a highly fact-intensive inquiry that demands evaluation of the totality of circumstances surrounding the police-citizen encounter.” Nyema, 249 N.J. at 528 (cleaned up). But an arresting officer’s hunch is never enough. See id. at 527-28, 535. Here, Detective Camacho had nothing more than a hunch, which cannot satisfy Terry.

A. On the Body-Worn Camera Footage, Mr. Sapp Displays No Nervous Behavior or Furtive Gestures.

As a preliminary matter, the findings of fact undergirding the trial court’s conclusion that reasonable suspicion existed are directly contradicted by the BWC footage played at the suppression hearing.

“The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence.” Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). “Nevertheless, when the trial court's factual findings are ‘clearly mistaken,’ ‘the interests of justice demand intervention by an appellate court.’” State v. Erazo, 254 N.J. 277, 297 (2023) (quoting State v. L.H., 239 N.J. 22, 47 (2019) (internal quotations omitted)); see State v. S.S., 229 N.J. 360, 381 (2017) (“Deference ends when a trial court's factual findings are not supported

by sufficient credible evidence in the record.”). The appellate court “owe[s] the trial court’s evidentiary findings reasoned deference, not blind deference.”

State in Int. of A.R., 234 N.J. 82, 106 (2018).

Judge Marbrey made the following factual findings:

[T]he Court finds that based on Detective Camacho’s observations that the Defendant appeared to “hunch over” in his seat attempting to conceal view of his waistline coupled with the use of the Defendant’s safety vest to cover his waist that there was sufficient reason to ask the Defendant to step out of the vehicle. This finding is supported by the fact that Detective Camacho testified that the Defendant appeared to be nervous and reluctant to answer officer’s questions.

[(Da20-21)]

However, the video disproves two of the court’s critical factual findings. First, Mr. Sapp never hunched over in his seat or attempted to conceal the view of his waistline. At one point, Mr. Sapp slightly leaned to his right when opening the glove compartment to retrieve his car’s registration. (Da26 at 00:44 to 00:51) At all other points in the video, Mr. Sapp sat upright in his seat. (Da26 at 00:35 to 02:07) Second, Mr. Sapp displayed neither nervous behavior nor any reluctance to answer the detectives’ questions. Mr. Sapp spoke at a normal cadence and speed, made direct eye contact, volunteered information to the detectives regarding where he was heading and why, and answered all the detectives’ questions directly. (Da26 at 00:35 to 02:07) The trial court erred in finding that Mr. Sapp hunched in his seat, attempted to conceal his waist,

appeared nervous, and was reluctant to answer the detectives' questions; the court's legal conclusions flowing from these erroneous factual findings must be reversed.

B. Alternatively, Mr. Sapp's Supposed Furtive Gestures and Nervousness Did Not Establish Reasonable Suspicion to Frisk Him.

Even if this Court defers to the trial court's factual findings, they are insufficient to establish that the detectives had reasonable articulable suspicion that Mr. Sapp was armed.

It is "well-settled" that "seemingly furtive movements, without more, are insufficient to constitute reasonable and articulable suspicion." Nyema, 249 N.J. at 530; State v. Lund, 119 N.J. 35, 47 (1990); State v. Carty, 170 N.J. 632, 648, modified, 174 N.J. 351 (2002); State v. Rosario, 229 N.J. 263, 276-77 (2017); State v. Goldsmith, 251 N.J. 384, 400 (2022). Similarly, "nervous behavior . . . cannot drive the reasonable suspicion analysis given the wide range of behavior exhibited by many different people for varying reasons while in the presence of police." Nyema, 249 N.J. at 533; see State v. Costa, 327 N.J. Super. 22, 32 (App. Div. 1999) ("A Terry stop must be supported by more than just an awkward reaction to police presence."). That is because "whatever individuals may do -- whether they do nothing, something, or anything in between -- the behavior can be argued to be suspicious." Nyema,

249 N.J. at 533-34. Therefore, “when the conduct in question is an ambiguous indicator of involvement in criminal activity and subject to many different interpretations, that conduct cannot alone form the basis for reasonable suspicion.” Id. at 534.

In Lund, an officer stopped a car for traffic infractions and noticed the driver reach toward the back seat. 119 N.J. at 41. While speaking to the officer, the driver appeared nervous and repeatedly glanced toward the back seat of the car. Ibid. The Supreme Court held this was insufficient grounds for a frisk. Id. at 48. The Court noted that other suspicious factors -- such as lying to the police, absence of identification, additional evasive actions, or the lateness of the hour -- might, together with nervousness or furtive gestures, justify a frisk. Ibid.; compare State v. Casimono, 250 N.J. Super. 173, 177, 181 (App. Div. 1991) (holding a frisk was unjustified where a car passenger furtively bent down out of an officer’s view as the car was pulling over); with State v. Daniels, 264 N.J. Super. 161, 167 (App. Div. 1993) (upholding a frisk where a passenger furtively reached under the console and the defendant failed to promptly pull over or supply a valid license or registration); and State v. Johnson, 274 N.J. Super. 137, 155 (App. Div. 1994) (upholding a protective sweep where a furtive gesture was combined with lying to the police, the late hour, the defendant’s “evasive action”).

Detective Camacho testified that he believed Mr. Sapp was armed based on “his nervous behavior, due to his furtive movements, grabbing the safety vest, covering it over his waistband area.” (2T:19-2 to 8) But Mr. Sapp’s alleged nervous behavior, by itself, cannot establish reasonable suspicion that he was armed. See Nyema, 249 N.J. at 530, 533. And Mr. Sapp placing his work vest down on his lap, after displaying it for the detectives to prove where he worked, is exactly the sort of ambiguous conduct that Nyema warned is irrelevant to a reasonable suspicion analysis. See id. at 534. Detective Camacho offered no compelling reason to believe that Mr. Sapp placing his work vest down in his lap was “furtive,” and not simply the most natural place to put the vest down after holding it up in the air. Moreover, none of the additional Lund factors apply; Mr. Sapp did not lie to the detectives or tell a conflicting story, he promptly provided his license and registration, and the stop took place in the middle of the day. See Lund, 119 N.J. at 48. Nervousness and ambiguous conduct like this, standing alone, cannot constitute reasonable suspicion. See Nyema, 249 N.J. at 534-5. Detective Camacho had a hunch when he ordered Mr. Sapp out of the car; nothing more. The trial court should have suppressed the evidence seized from the frisk that followed.

C. The Motion Court Erred in Denying Suppression Based on Mr. Sapp's Conduct After He Exited the Car, Because it Was Equally Ambiguous Evidence of Nervousness.

In finding the frisk of Mr. Sapp was reasonable, the court pointed to Mr. Sapp's conduct after he was ordered out of his car to be frisked; this was also error.

An officer's "premature" intent to conduct a frisk can only be saved when, afterwards, "sufficient facts come to light" to save the legality of the frisk. State v. Smith, 134 N.J. 599, 621 (1994). In Smith, after officers ordered a passenger out of a vehicle during a motor vehicle stop, she "was nervous and crying; she engaged in a prolonged stare with [the driver]; the trooper noticed the bulge beneath her blouse; and [the passenger] exclaimed, 'It's not mine, they made me put it in there.'" Ibid. The Supreme Court found that those facts in their totality justified frisking the driver. See also State v. Wanczyk, 201 N.J. Super. 258, 264 (App. Div. 1985) ("Once defendant exited the car and the police observed the bulge in the left sleeve of defendant's jacket, the officers unquestionably had the right to conduct a frisk of the defendant under the principles pronounced in Terry v. Ohio, supra.").

Here, after ordering Mr. Sapp out of the car based on his nervousness and ambiguously placing his safety vest in his lap, the detectives saw no bulge. Mr. Sapp displayed no signs of distress. He said nothing incriminating or

suspicious. He followed the detective's orders to put his hands on the car. And when Detective Camacho frisked him, Mr. Sapp did not twist his body or resist in any way. Nevertheless, the trial court took issue with two things: Mr. Sapp (1) held his work vest by his side when he stepped out of the vehicle, and (2) he "laid the front of his body against the back of the vehicle" when, complying with the detective's order, he placed his hands on the car to be frisked. (Da23)

Neither of these observations can save Detective Camacho's hunch, because -- like Mr. Sapp's conduct inside his car -- neither is inherently suspicious. First, there is nothing threatening or criminal about holding a work vest; Mr. Sapp had to pick the vest up out of his lap to exit his car, and it is entirely plausible that he held it, instead of putting it away, in an effort to exit his car promptly. Moreover, Mr. Sapp did not hold the vest in a strange or suspicious way; as the video shows, he held it loosely in one hand by his side. (Da25 at 02:30 to 02:35) Second, there is nothing suspicious about Mr. Sapp allegedly leaning his body against the car when he assumed the position to be frisked; had Mr. Sapp held his body stiffly, or awkwardly far from the car, Detective Camacho might have found that suspicious, too. See Nyema, 249 N.J. at 533-34 ("[W]hatever individuals may do -- whether they do nothing, something, or anything in between -- the behavior can be argued to be suspicious."). At best, Mr. Sapp's behavior could have been "an awkward


reaction to police presence.” See Costa, 327 N.J. Super. at 32. But it was ultimately “an ambiguous indicator of involvement in criminal activity and subject to many different interpretations.” See Nyema, 249 N.J. at 534. And, in a reasonable suspicion analysis, “[z]ero plus zero will always equal zero.” Nyema, 249 N.J. at 534-5 (internal quotation omitted). Detective Camacho had nothing more than a hunch that Mr. Sapp had a gun. Reasonable suspicion demands more. Accordingly, the trial court’s ruling denying suppression must be reversed.

CONCLUSION

The trial court erred when it denied Mr. Sapp's suppression motion, both in its findings of fact and its conclusions of law. For the reasons set forth above, the trial court's ruling denying suppression must be reversed.

Respectfully submitted,

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Dated: October 9, 2024



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The Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
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Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Respondent)
v. Tarrance Sapp A/K/A Terrance Sapp (Defendant-Appellant)

Docket No. A-000025-23

Criminal Action: On Appeal from a Judgment of Conviction of the
Superior Court of New Jersey, Law Division
(Criminal), Mercer County

Sat Below: Honorable Janetta D. Marbrey, J.S.C.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of
a more formal brief submitted on behalf of the State of New Jersey.

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PROCEDURAL HISTORY

On or about July 26, 2022, a Mercer County Grand Jury returned a nine count indictment, Indictment Number 22-07-466-I, charging defendant with: second-degree unlawful possession of a firearm, contrary to N.J.S.A. 2C:39-5(b)(1) (Count I), fourth-degree possession of a large capacity magazine, contrary to the provisions of N.J.S.A. 2C:39-3(j) (Count II), third-degree possession of cocaine, contrary to the provisions of N.J.S.A. 2C:35-10a(1) (Count III), second-degree possession of a controlled dangerous substance with intent to distribute, contrary to the provisions of N.J.S.A. 2C:35-5a(1) (Count IV), third-degree possession of a controlled dangerous substance with intent to distribute on or near school property, contrary to the provisions of N.J.S.A. 2C:35-7 (Count V), second-degree possession of a controlled dangerous substance on or near a public facility, contrary to the provisions of N.J.S.A. 2C:35-7.1 (Count VI), second-degree possession of a firearm while committing a controlled dangerous substance offense, contrary to the provisions N.J.S.A. 2C:39-4.1a, (Count VII), second-degree certain person not to possess a firearm, contrary to the provisions of N.J.S.A. 2C:39-7b(1) (Count VIII), and fourth-degree certain persons not to possess certain ammunition, contrary to the provisions of N.J.S.A. 2C:39-7a(1) (Count IX). Da1-9.¹

¹ The State adopts the transcripts references as noted in defendant's brief.

On or about August 29, 2022, defendant filed a motion to suppress the evidence seized without a warrant, claiming that the traffic stop was unlawful, and that defendant exhibited no furtive movements. (2T:1-1 to 1-6).¹ The Honorable Janetta D. Marbrey, J.S.C., heard argument on defendant's motion on February 28, 2023 (2T), and denied the motion on April 24, 2023. Da10. (3T:7-2 to 7-8).¹ Defendant then entered a conditional plea to Count I, unlawful possession of a firearm in the second degree. (3T:3-12 to 3-17). On or about August 3, 2023, in accordance with the plea agreement, Judge Marbrey sentenced defendant to five years of incarceration with three-and-a-half years of mandatory parole ineligibility, and dismissed all remaining counts in the indictment. Da27.

On or about September 5, 2023, defendant filed a notice of appeal with the Superior Court, Appellate Division. Da31-34.

COUNTERSTATEMENT OF FACTS

On or about May 12, 2022, at 10:58 AM, Trenton Police Department Detective Aaron Camacho was assigned to the Trenton Police Violent Crimes Unit. (2T:8-22 to 9-22). Detective Camacho and other officers were providing extra attention in the area of North Montgomery Street and Academy Street in Trenton, New Jersey. (2T:10-6 to 10-8) This is an area known to the Trenton

Police Department as a high crime area where weapons and narcotics offenses frequently occur. (2T:10-10 to 11-1).

While in the area, Detective Camacho's attention was drawn to a suspicious gray Jeep Grand Cherokee. (2T:11-2 to 11-4). Detective Camacho noticed that the Jeep failed to utilize its turn signal², was equipped with heavily tinted front windows, had an inoperable rear brake light ("taillight", "stop lamp"), and was circling the block. (2T:11-5 to 14-6). Detective Camacho and other officers at the scene proceeded to conduct a motor vehicle stop. (2T:14-11 to 14-18).

The footage from Detective Camacho's body-worn camera revealed defendant's rear brake light to clearly be inoperable at the time of the stop. Da25 at :35. The heavy tint on defendant's passenger's side windows can be seen on this body-worn camera footage as well. Da25 at :45. It is impossible to see any occupants of the Jeep from this body-worn camera footage until the window is cracked. (2T:11-6 to 11-18). Da25 at :45 to :55. Additionally, on Trenton Police Detective Gianni Zapple's body-worn camera footage from the incident, which captures the driver's side of the Jeep, defendant's passenger and driver side windows were visibly fully tinted. Da26 at :35. When Detective Zapple approached defendant, the tints on the passenger's side window can be seen from

² The trial court determined that, based on the totality of the circumstances, it is irrelevant whether or not defendant used his turn signal.

inside the vehicle. Id. Detective Camacho was able to observe a Heineken bottle in the driver's side door. (2T:17-12 to 18-1). Detective Zapple later recovered this bottle. (2T:43-1 to 43-8).

The driver, identified as defendant, Tarrance Sapp, was noticeably anxious about the stop. (2T:19-2 to 19-8). Defendant can be heard on the body-worn camera, stating "I'm on my way to work. I got the two o'clock shift. . . (indiscernible) and no reason to lie." (2T:29-25 to 30-3). Defendant was speaking so fast that he was difficult to understand, and he was mumbling his words and sticking his hands in his waistband during the initial exchange with officers. (2T:16-18 to 17-2). Upon being stopped, defendant immediately began making excuses and telling officers about his comings and goings before they even asked him about his travel pattern that day. (2T:29-25 to 30-5). Defendant frequently used his hands to speak, and, as the stop continued, defendant became more and more anxious, stating "I have no reason to lie". (2T:38-1 to 41-1). Defendant referenced lying at least three times during the initial stop. Id.

Defendant then displayed an orange safety vest, which he initially held up to show officers he was on his way to work, before placing it over his waistband area for the remainder of his time seated in the Jeep's driver seat. (2T:18-7 to 18-23). From Detective Camacho's training and experience, he knew that criminals commonly conceal weapons in their waistband, so the detective was immediately alerted by the fact that defendant chose to place the safety vest over

his waist. (2T:18-14 to 18-23). Also, defendant sits in a slightly hunched over position during portions of the traffic stop. (2T:59-11 to 59-14). At times defendant appears hunched, and at other times although his back is still against the seat, he can be seen sticking his stomach out slightly as if to conceal something in his waistband. Da25 at 2:15.

Defendant began speaking even more quickly and nervously after Detective Zapple pointed out that officers saw him “circling the block”, which defeated defendant’s statement that he was “on his way to work” at the time of the stop. At that point, defendant began fiddling with the vest on his lap and with his waistband area in general, while still hunched over with his arms and hands tight to his body, as if he was hiding something. (2T:41-16 to 41-23). Da26 at 2:00-2:35. Because of this, Trenton Police Detective Aaron Bernstein, who was assisting Detective Camacho with the stop, ordered defendant out of the vehicle at that time. (2T:18-24 to 19-8).

Detectives then escorted defendant to the rear of the Jeep, and he continued to hold the vest over his waist area while he walked there. (2T:19-9 to 19-25). Once all parties arrived at the rear of the vehicle, Detective Camacho noticed that defendant remained tense when given instructions to place his hands on the Jeep. (2T:20-1 to 20-3). Detective Camacho conducted a pat frisk on defendant. (2T:20-4 to 20-18). Defendant then tightened his abdomen and thrust his waist against the rear of the truck, restricting the detective’s ability to

conduct the pat frisk. (2T:20-19 to 21-3). Detective Camacho pulled defendant's body back towards him and immediately felt the handle of a gun. (2T:21-4 to 21-8). Detectives then secured the firearm, a Ruger P95 9mm handgun, from defendant's person at that time, and placed defendant under arrest. (2T:21-18 to 21-22).

A search of the vehicle following a K9 sniff revealed approximately 21 grams of C.D.S. crack cocaine located in the driver's side door panel. (2T:24-1 to 25-19).

At the conclusion of testimony, the trial court found that the testimony of Detective Camacho was credible and reliable. Da23. The trial court held that the tinting on the windows was sufficient to obscure officers' ability to see persons in the interior of the vehicle, calling the tints "a clear violation of N.J.S.A. 39:8-4". Da17. Additionally, the trial court held that defendant's taillight was broken, in violation of N.J.S.A. 39:9-4, and that these violations both provided the officers sufficient reasonable and articulable suspicion to stop defendant's vehicle. Id.

The trial court found that based on Detective Camacho's observations of defendant hunched over in his seat, as well as defendant's use of the safety vest to conceal a view of his waistband, there was reasonable and articulable suspicion to ask defendant to step out of the vehicle. Da21. The trial court then held that there was reasonable and justifiable suspicion to conduct the pat frisk

of defendant, finding that defendant displayed the safety vest in front of his waistband, while he was both inside and outside of the vehicle, in order to obstruct officers' view of his waistband. Da23. The trial court finally found that defendant laid the front of his body against the back of the vehicle to obstruct officers' view of his waistband. "As such," the trial court stated, ". . .this Court finds that . . . officers had a reasonable and justifiable suspicion to conduct a pat frisk of [defendant]". Id. The trial court made these findings after a review of Detective Camacho and Zapple's body-worn camera footage. Id.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS

Defendant argues the trial court's factual findings regarding defendant being "hunched over" concealing his waistband and behaving nervously were inaccurate, and that, even if accurate, his behavior was insufficient to establish reasonable suspicion justifying the Terry³ frisk. The trial court's legal findings regarding defendant's behaviors during the traffic stop are amply supported by the credible testimony of the detective at the suppression hearing. Moreover, as

³ Terry v. Ohio, 392 U.S. 1, (1968).

the trial court properly found, defendant's actions and movements were in fact sufficient to alert detectives to the possibility that defendant may have been armed and dangerous. As such, the trial court appropriately found the frisk to be justified and properly denied defendant's motion to suppress. That denial should be affirmed.

The standard of review on a motion to suppress is deferential – the reviewing court must “uphold the factual findings underlying the trial court's decision” if they “are supported by sufficient credible evidence in the record.” State v. Nyema, 249 N.J. 509, 526 (2022) (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). Appellate courts “defer[] to those findings in recognition of the trial court's ‘opportunity to hear and see the witnesses and to have the “feel” of the case, which a reviewing court cannot enjoy.’ ” Ibid. (quoting State v. Elders, 192 N.J. 224, 244 (2007)). Such deference is appropriate for institutional reasons: (1) recognizing “the trial court's ‘experience and expertise in fulfilling the role of factfinder’ ”; (2) maintaining the trial court's “legitimacy”; and (3) avoiding “duplicating efforts without significantly improving decisional accuracy.” State v. Carrillo, 469 N.J. Super. 318, 332 (App. Div. 2021) (quoting State v. S.S., 229 N.J. 360, 380-81 (2017)). Therefore, a trial court's factual findings should only be overturned if the findings are “so clearly mistaken ‘that the interests of justice demand intervention and correction.’ ” State v. Gamble, 218 N.J. 412, 425 (2014) (quoting State v. Elders, 192 N.J. 224, 244 (2007)).

“A trial court's legal conclusions, however, and its view of ‘the consequences that flow from established facts,’ are reviewed de novo.” Nyema, 249 N.J. at 526-27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

At the conclusion of testimony, the trial court found the testimony of Detective Camacho to be credible and reliable. Da23. That credible and reliable testimony amply supported the trial court’s factual findings.

The trial court accepted Detective Camacho’s testimony that defendant was acting nervously from the beginning of the traffic stop. (2T:16-18 to 17-2) (2T:54-16 to 55-1); Da20-22. The trial court further accepted Detective Camacho’s testimony that defendant appeared hunched over in his seat – which is in fact confirmed on the body-worn camera footage, see Da26 – and that defendant covered his waist area with the orange safety vest during the same conversation. (2T:18-7 to 18-23); Da21-22. The trial court further accepted Detective Camacho’s testimony that after defendant was given orders to exit the vehicle and proceed to the trunk of the car, defendant continued to use the safety vest to shield his waist from the officer’s view – also confirmed on the body-worn camera footage. (2T:19-21 to 19-24); Da20-22; Da26. The trial court also properly accepted Detective Camacho’s testimony that upon arriving at the back of the Jeep, defendant “pushed his waistband area into the back of the trunk and thrust (sic) his waist firmly against the trunk”. (2T:20-19 to 20-24).

As much can be seen on the body worn camera, where defendant can be heard during the initial stop speaking nervously, repeating the same answers over and over and constantly referring to how he is not “lying”. Da25 at 1:30. The body-worn camera footage then shows defendant take the safety vest from out of the back seat, display it to officers, then place it in his lap while slightly hunched over, concealing officer’s view of his waistband. Da25 at 2:00. Following this, the body-worn camera shows defendant using the safety vest to shield his waistband from the Detective’s view while walking to the rear of the Jeep. Da26 at 2:30. Defendant can then be seen leaning his body against the trunk of the vehicle, consistent with Detective Camacho’s description, to obstruct officers’ view of his waist area prior to the commencement of the Terry frisk. Da25 at 2:30.

The trial court made its findings after watching Detective Camacho and listening to his testimony, then reviewing the body-worn camera from the incident. Da23. Thus, these facts are supported by “sufficient credible evidence in the record.” See Nyema, 249 N.J. at 526. While defendant clearly interprets the body-worn camera footage differently, defendant has not established that the trial court’s factual findings are “so clearly mistaken ‘that the interests of justice demand intervention and correction.’” See Gamble, 218 N.J. at 425. Thus, they are entitled to deference by this Court. See Nyema, 249 N.J. at 526.

The factual findings made by the trial court amply support the conclusion that the detectives' pat frisk of defendant was justified by the totality of the circumstances.

Pursuant to Terry v. Ohio, 392 U.S. 1 (1968), after a lawful stop, an officer may conduct a reasonable search for weapons if he has "reason to believe that he [or she] is dealing with an armed and dangerous individual." State v. Carillo, 469 N.J. Super. 318 (App. Div. 2021); State v. Richards, 351 N.J. Super. 289, 299 (App. Div. 2002) (quoting Terry, 392 U.S. at 24). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety[,] or that of others[,] was in danger." Terry, 392 U.S. at 27. Thus, the "reasonableness of the search ... is to be measured by an objective standard." Carillo, 469 N.J. Super. at 338. Although a mere "hunch" does not create reasonable suspicion, Terry, 392 U.S. at 27, the 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. State v. Gamble, 218 N.J. 412, 428 (2014)

The officer is then "entitled ... to conduct a carefully limited search of the outer clothing of such person[] in an attempt to discover weapons which might be used to assault him." Id. at 30, ; see also State v. Nishina, 175 N.J. 502, 514-15 (2003) (stating that "[u]nder Terry ... an officer is permitted to pat down a

citizen's outer clothing when the officer ‘has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.’ ” (quoting Terry, 392 U.S. at 27)).

The protective search must be “confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.” Carillo, 469 N.J. Super. 318 (App. Div. 2021); State v. Jackson, 276 N.J. Super. 623, 629 (App. Div. 1994) (quoting Terry, 392 U.S. at 29). If “a police officer lawfully pats down a suspect's outer clothing[,] and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical consideration that adhere in the plain view context. Id. at 630-31 (emphasis omitted) (quoting Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993)).

“[T]he same conduct that justifies an investigatory stop may also present the officer with a specific and particularized reason to believe that the suspect is armed.” State v. Privott, 203 N.J. 16, 30 (2010). The existence of reasonable suspicion to frisk “is based on the totality of the circumstances.” Roach, 172 N.J. at 27. Our Court has recognized that the protective sweep authorized in is sort of protective frisk is “aligned with an evolution of familiar principles adhered to in this State, which provide law enforcement officers with critical

safety tools to perform their oft-dangerous tasks.” State v. Robinson, 228 N.J. 529, 545 (2017).

“The existence of an objectively reasonable suspicion is based on the totality of the circumstances.” Roach, 172 N.J. at 27. When reviewing whether the State has shown a valid protective frisk, consideration of the totality of the circumstances requires a reviewing court “give weight to ‘the officer's knowledge and experience’ as well as ‘rational inferences that could be drawn from the facts objectively and reasonably viewed in light of the officer's expertise.’” State v. Bard, 445 N.J. Super. 145 (App. Div. 2016); State v. Citarella, 154 N.J. 272, 279 (1998). “The fact that purely innocent connotations can be ascribed to a person's actions does not mean that an officer cannot base a finding of reasonable suspicion on those actions as long as ‘a reasonable person would find the actions are consistent with guilt.’” Bard, 445 N.J. Super. at 156; Citarella, 154 N.J. at 279–80.

To be clear, “[e]ven if all of the factors were susceptible of purely innocent explanations, a group of innocent circumstances in the aggregate can support a finding of reasonable suspicion.” State v. Dunbar, 434 N.J. Super. 522, 527 (App. Div. 2014); see also State v. Birkenmeier, 185 N.J. 552, 562 (2006) (“Facts that might seem innocent when viewed in isolation can sustain a finding of reasonable suspicion when considered in the aggregate”); State v. Mann, 203 N.J. 328, 338 (2010) (“[T]he fact that a suspect's behavior may be consistent

with innocent behavior does not control the analysis.”).

Factors that support an articulable and reasonable suspicion a suspect is armed and dangerous include: a stop occurring in a high-crime area, see Privott, 203 N.J. at 26; see also State v. Valentine, 134 N.J. 536, 547 (1994) (explaining “the location of the investigatory stop can reasonably elevate a police officer's suspicion that a suspect is armed”); the knowledge and experience of police officers, see Valentine, 134 N.J. at 547 (“Terry itself acknowledges that police officers must be permitted to use their knowledge and experience in deciding whether to frisk a suspect.”); see also Bard, 445 N.J. Super. at 156-57; and a suspect's movements towards a waistband, pocket, or other area of the body where the suspect is likely to conceal a weapon, see, e.g., Privott, 203 N.J. at 29; Bard, 445 N.J. Super. at 157-58; State v. Bellamy, 260 N.J. Super. 449, 457 (App. Div. 1992).

As the trial court properly found, Detective Camacho’s pat-down frisk was justified given the totality of the circumstances. Detective Camacho testified that the part of Trenton in which this incident occurred was a high-crime area and that he had encountered weapons “numerous times in that area.” (2T:10-10 to 11-1). “Although a stop in a high-crime area does not by itself justify a Terry frisk ..., the location of the investigatory stop can reasonably elevate a police officer's suspicion that a suspect is armed.” Valentine, 134 N.J. at 547. The totality of the circumstances – his presence in a high-crime area known for drugs

and guns, his circling the area numerous times in his vehicle, his perceived nervousness, his untrue unsolicited explanation to the detectives of where he was going, his attempts to conceal his waistband by hunching over and placing the safety vest in his lap – informed Detective Camacho’s reasonable and articulable suspicion defendant might be armed and dangerous.

Defendant’s attempt to isolate each circumstance presented to Detective Camacho, Db13-14, is unavailing, and ignores the totality of the circumstances that the detectives faced. See Valentine, 134 N.J. at 547 (“Terry itself acknowledges that police officers must be permitted to use their knowledge and experience in deciding whether to frisk a suspect”); id. at 543 (explaining that although “the Terry standard is an objective one, ... ‘[t]he process does not deal with hard certainties, but with probabilities’”) (second alteration in original) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

Moreover, the trial court did not err in basing the finding – partly – on defendant’s actions after he was ordered out of his vehicle. It is well-established that police may order the driver of a vehicle, stopped for a traffic violation, to step out the vehicle, even in the absence of furtive movements of criminal activity. State v. Smith, 134 N.J. 599, 610-11 (1994). Therefore, the detectives’ commands that defendant step out of the car were legal. Once defendant moved to the back of the vehicle, his actions of holding the safety vest near his waistband, then pressing his waist toward the vehicle – which he did prior to the

pat-down – added to the totality of the circumstances and further heightened Detective Camacho’s reasonable suspicion that he was armed and dangerous. In fact, the body-worn camera reveals that before the pat-down started, Detective Zapple noted his strange behavior, directing the other detectives to “get over him, he’s like, acting weird, he’s like holding something near his waist.” Da26 at 2:30. Again, defendant’s attempts to isolate this conduct into separate, innocuous actions, Db15-17, fails, as his argument ignores the totality of the circumstances.

Defendant has not and cannot establish that the trial court erred by finding that the totality of the circumstances, during the quickly unfolding events presented, supported a reasonable and articulable suspicion defendant was armed and dangerous. Therefore, the frisk was justified under the circumstances. As a result, and because the detective immediately identified the object in defendant's pocket as contraband without first manipulating it, the seizure of the handgun was lawful. See State v. Toth, 321 N.J. Super. 609, 616-17 (App. Div. 1999) (holding that a pat-down in which an officer immediately identifies an object as contraband without “in any way[] manipul[at]ing] or explor[ing]” it “with his fingers” was a valid Terry frisk under the plain-feel doctrine).

Accordingly, the trial court properly denied defendant’s motion to suppress. That denial should be affirmed.

CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the State respectfully submits the denial of defendant's motion to suppress be affirmed.

Respectfully submitted,

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