



PHIL MURPHY  
Governor

SHEILA OLIVER  
Lt. Governor

**State of New Jersey**  
**OFFICE OF THE PUBLIC DEFENDER**

**Appellate Section**

**ALISON PERRONE**  
Appellate Deputy/Assistant Public Defender  
31 Clinton Street, 9<sup>th</sup> Floor, P.O. Box 46003  
Newark, New Jersey 07101  
Tel. 973-877-1200 · Fax 973-877-1239

JOSEPH E. KRAKORA  
Public Defender

December 31, 2023

ALYSSA AIELLO  
ID. NO. 054081991  
Assistant Deputy Public Defender  
Of Counsel and On the Brief

**LETTER BRIEF ON BEHALF OF DEFENDANT-APPELLANT**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3635-22T4  
INDICTMENT NO. 22-08-02442-I

|                       |   |                                     |
|-----------------------|---|-------------------------------------|
| STATE OF NEW JERSEY,  | : | <u>CRIMINAL ACTION</u>              |
| Plaintiff-Respondent, | : | On Appeal From a Judgment of        |
| v.                    | : | Conviction of the Superior Court of |
|                       | : | New Jersey, Law Division,           |
|                       | : | Camden County.                      |
| ROBERT LOVE,          | : | Sat Below:                          |
| Defendant-Appellant   | : | Hon. Yolanda C. Rodriguez, 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) on behalf of Robert Love.

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- 3T – transcript of June 8, 2023 (plea)
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## PROCEDURAL HISTORY

Camden County Indictment No. 22-08-02442 charged the defendant, Robert Love, with second-degree unlawful possession of a firearm, contrary to N.J.S.A. 2C:39-5b(1) (count one); third-degree possession of a controlled dangerous substance (CDS), contrary to N.J.S.A. 2C:35-10a(1) (counts two and three); and second-degree possession of a firearm by certain persons not to have weapons, contrary to N.J.S.A. 2C:39-7b(1) (count four). (Da 1-5)

Love filed a motion to suppress evidence, which was heard and denied by the Honorable Yolanda C. Rodriguez, J.S.C., on February 16, 2023. (Da 6; 1T 69-13 to 82-17) Love moved for reconsideration. That motion was heard and denied by Judge Rodriguez on May 26, 2023. (Da 7; 2T 14-14 to 20-7)

On June 8, 2023, Love appeared before Judge Rodriguez and entered a guilty plea to unlawful possession of a firearm, as charged in count one.<sup>1</sup> (Da 8-13; 3T 3-18 to 3-24; 3T 8-4 to 8-25) On July 17, 2023, Judge Rodriguez sentenced Love to five years in prison with 42 months of parole ineligibility, pursuant to the Graves Act, N.J.S.A. 2C:43-6c. (Da 14-17; 4T 6-8 to 8-18)

Love filed a notice of appeal on July 28, 2023. (Da 18-22)

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<sup>1</sup> Love also pled guilty to possession of CDS with intent to distribute under Indictment No. 22-11-3245, which is not part of this appeal. (3T 3-18 to 3-24)

## **STATEMENT OF FACTS**

Robert Love moved to suppress evidence discovered when Camden police stopped the car he was riding in because he and the driver were not wearing seatbelts. The only witness called by the State was Michael Lichty, the “primary officer” in the case. (1T 24-19 to 24-20) Footage from Lichty’s body-worn camera was also introduced into evidence. (Da 23; 1T 17-11 to 18-16)

Lichty testified that in June of 2022, he was working as a patrol officer with the Community Impact Division (C.I.D.), whose “assignment was to focus on violent crimes and look for wanted individuals.” (1T 7-7 to 7-8) The incident report that Lichty authored provided the following account of the circumstances surrounding the motor vehicle stop. On June 6, 2022, just after midnight, “[C.I.D.] units received information of a male in possession of a firearm in the area of Collins Road and Alabama Road. The male was to be inside of a gold Kia Optima with the first three characters of the New Jersey registration being L85.” (Da 25; 1T 22-5 to 22-11) The police report did not, however, include a physical description of the “male” with a gun; nor did it indicate whether the male was the driver or a passenger, how many occupants were in the Kia or where the Kia was headed. (1T 29-20 to 30-6)

According to the report, once this information was received, the following occurred. “Units began to circulate the area in attempt to locate [the Kia].” (Da

25; 1T 13-9 to 13-14) Lichty spotted a Kia matching the description near the intersection of Kearsarge and Collings roads and alerted the other units. (Da 25; 1T 13-13 to 14-2) He and Sergeant Berg stopped the vehicle “due to both occupants failing to wear a seatbelt.”<sup>2</sup> (Da 25; 1T 14-1 to 14-13) Berg made contact with the driver while Lichty made contact with the passenger, who was later identified as Robert Love. (Da 25; 1T 14-14 to 14-17; 1T 14-25 to 15-4) Lichty asked Love, who appeared “visibly nervous,” to step out of the car, “not[ing] that while speaking to [Love], he was wearing a crossbody bag that appeared to be heavily weighted down and he was holding it tight with both hands.”<sup>3</sup> (Da 24; 1T 15-18 to 16-3) Lichty proceeded to handcuff and frisk Love, and immediately felt in Love’s bag what Lichty believed was a firearm. (Da 25; 1T 16-10 to 16-17) When the bag was searched, a gun and drugs were recovered.

Based on Lichty’s report, Love filed a motion to suppress the contents of the bag, arguing, among other things, that the tip the C.I.D. units received did

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<sup>2</sup> The bodycam footage does not show Lichty tell the occupants that they were stopped because their seatbelts were not fastened. Instead, saying, “Any reason why you guys were following so close?” (Da 23; 1T 19-9 to 19-10)

<sup>3</sup> At the suppression hearing, Lichty testified that Love was holding the bag with his left hand. (1T 15-18 to 15-20) However, the bodycam footage showed that Love did not have either hand on the bag; that is because he was holding a cell phone in one hand and a cigarette in the other. (Da 23; 1T 33-5 to 34-23)

not provide Lichty with reasonable suspicion to remove Love from the car and frisk him. (1T 56-8 to 61-16)

At the suppression hearing, Lichty testified to details that were not mentioned anywhere in his report. First, Lichty testified that the information regarding the Kia was provided to the C.I.D. by Detective Palermo of the Narcotics and Gang Unit and that Palermo received the information from a confidential informant (C.I.). While Lichty had no personal knowledge of the CI, he claimed that Palermo had received information from the C.I. on approximately 20 prior occasions and found the C.I. to be reliable 75 percent of the time, and that the C.I.'s prior tips generally involved "[p]ersons in possession of a weapon." (1T 8-2 to 9-12; 1T 13-4 to 13-8) However, Lichty could not say when or how the C.I. communicated the tip to Palermo, or how the C.I. learned the information contained in tip, i.e., whether it was based on the C.I.'s personal observations or on something the C.I. heard from a third person. (1T 23-9 to 23-13; 1T 31-2 to 32-21)

According to Lichty, it is common for narcotics and gang detectives to relay information received from a C.I. to officers assigned to the C.I.D., because the C.I.D. is "pretty much the marked police presence" for the Narcotics and

Gang Unit.<sup>4</sup> (1T 5-14 to 5-16) Lichty explained, “It normally entails them telling us of somebody possibly in possession of a firearm, what area, and a description that they provide or get provided by the confidential informant and us as marked units go and stop the vehicle or conduct pedestrian stops on the person.” (1T 8-22 to 9-2) Yet, when asked why his report did not mention that the information regarding the Kia was received from Palermo or that the alleged source of the tip was a C.I., Lichty responded: “Well, that wasn't known to me at the time.” (1T 28-13 to 28-15)

Lichty also claimed that part of the information relayed by Palermo was that the male in the Kia was “wearing a fanny pack with a .44 magnum inside of it,” and for that reason, when he saw Love wearing a fanny pack, he identified Love as the subject of the tip. (1T 8-5 to 8-15; 1T 26-18 to 26-25) Lichty testified: “I made contact with the passenger who was wearing the fanny pack as described by the C.I.” (1T 14-17 to 14-19) “He was sitting in the passenger seat with a fanny pack across his chest that he was holding tight to his body with his left hand,” which, according to Lichty, was “consistent with somebody that's armed with a firearm in an attempt to conceal any bulges.” (1T 15-16 to 15-24)

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<sup>4</sup> As of the suppression hearing, Lichty had been promoted to detective and assigned to the Narcotics and Gang Unit. (1T 4-19 to 4-23)



When confronted with the bodycam footage that showed Love holding a cellphone in his left hand and a cigarette in his right, see supra n.3, Lichty admitted that Love was not actually holding the bag with either of his hands. (1T 33-22 to 34-23) Lichty claimed that what he meant was that Love had his left arm resting unnaturally on his chest, like “trying to conceal or hide an object”; in Lichty’s view, the manner in which Love’s arm was positioned constituted the type of “furtive movement” he was trained to look for. (1T 40-14 to 40-24; 1T 42-5 to 42-17) Love’s hand, the one that Lichty said was resting unnaturally on Love’s chest, was in a cast. (1T 42-9 to 42-15)

On cross-examination, Lichty admitted that the details allegedly furnished by the C.I. regarding the gun – that it was a .44 magnum concealed inside a fanny pack – was a critical piece of information that he would not leave out of a police report that he authored. (1T 41-3 to 41-25) Defense counsel also established that information communicated via radio is recorded, and there was no recording of the tip that the C.I.D. units allegedly received that night. When asked about that, Lichty testified that Palermo did not communicate the tip via radio; instead, Lichty claimed, Palermo reached out to him directly by calling his cell phone.<sup>5</sup> (1T 22-4 to 24-9)

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<sup>5</sup> It is unclear whether Lichty and Palermo were communicating via personal cell phones or department-issued cell phones. While it does not appear that the Camden City Police Department (CCPD) has “a specific cell-phone policy,”

Lichty testified that Palermo should have written a supplemental report documenting the details of the tip. (1T 28-15 to 28-19) Lichty, however, had never seen a supplemental report written by Palermo, nor had such a report been furnished to the Defense. (1T 9-25 to 11-24; 1T 28-15 to 29-19) It is unclear how Lichty refreshed his recollection as to details of the tip that were not in the incident report because, as Lichty testified, the incident report was the only report he ever saw. (1T 28-23 to 30-23)

Love urged the judge to disregard Lichty's testimony regarding the source of the tip and the reliability of the alleged C.I., as well as Lichty's claim that the tip described the male in the Kia as wearing a fanny pack, because that information was not contained in any police report. Alternatively, even if that information had been documented, Love argued, it did not furnish Lichty with reasonable suspicion to frisk Love. (1T 46-2 to 62-2) The State urged the judge to find that Lichty's testimony was credible (1T 64-4 to 64-9), the C.I. was reliable (1T 62-4 to 62-9), and the specificity of the C.I.'s tip – that “an individual in this specific car, a gold Kia Optima, with the specific first three

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“work-related communications that cannot be done via radio should be done via a work phone.” In the Matter of Andrew Fegley, Camden County (Police Department), OAL Dkt. No. CSR 15991-18, initial decision at 7 (April 18, 2022), <https://nj.gov/csc/about/meetings/decisions/pdf/2022/5-18-22/A003%20FEGLEY%20ANDREW.pdf>. It is also unclear whether CCPD has a policy as to when officers are permitted to use a work phone in lieu of police radio for work-related communications.

letters being L85 . . . [and] a male in that vehicle had a fanny pack on his person that included a firearm” (1T 64-22 to 65-3) – furnished Lichty with reasonable suspicion that Love was armed and dangerous. (1T 66-4 to 68-3)

The judge found that Lichty’s testimony was credible and the C.I.’s tip reliable. In light of Lichty’s testimony that Love appeared nervous and was resting his injured hand on his chest in an unnatural way, the judge concluded that Lichty had reasonable suspicion to believe that Love was carrying a gun inside the fanny pack. Thus, the court found Love’s removal from the car and the frisk of his bag was appropriate, and the seizure of the gun and drugs from the fanny pack was lawful. (1T 70-1 to 81-3)

Love filed a motion for reconsideration, arguing that the State’s failure to turn over Palermo’s supplemental report was a discovery violation. In light of that violation, Love argued that the judge should not have relied on Lichty’s claims that the C.I. had provided reliable information to Palermo in the past or that the C.I. told Palermo that the male in the Kia was carrying a fanny pack with a gun, because those claims were not documented in any of the police reports turned over in discovery. (2T 4-23 to 12-21)

About a month before the hearing on the reconsideration motion, the State finally obtained Palermo’s supplemental report. (Da 26-29; 2T 15-10 to 15-12) The report was written on September 14, 2022, more than three months after the

incident and approximately two weeks after Love was indicted. (Da 26-29; 2T 14-22 to 15-5) The court clarified the chronology of events that led to the belated production of the report: according to the prosecutor, the State “made two requests for any supplemental reports before the matter was indicted and did not receive any” (2T 15-13 to 15-16); “it obviously wasn’t produced since it didn’t exist [yet]” (2T 15-5 to 15-6); on “March 17, 2023 the State ma[de] a third request for any [supplemental] reports” (2T 15-8 to 15-9); the State received Palermo’s report on March 22, 2023, and turned it over to the Defense on April 11, 2023, a month after Love’s motion for reconsideration was filed. (2T 15-7 to 15-15-12)

At no point in his report did Palermo allege that the C.I. told him the male in the Kia was wearing a fanny pack with a .44 magnum inside it. Nor did the report assess the C.I.’s reliability in terms of percentage or indicate the number of prior occasions on which the C.I. provided information. With respect to the contents of the tip and the C.I.’s reliability, Palermo’s report states only:

On June 6<sup>th</sup>, 2022 at approximately 0007 hours, I, Detective Palermo#850 received information from a confidential source stating that a male inside a gold Kia Optima was armed with a firearm. The confidential source further stated that the registration of the vehicle was New Jersey [REDACTED]. The confidential source has provided information in the past that has lead [sic] to numerous firearm arrest[s].

(Da 26)

In denying Love's motion for reconsideration, the judge did not address the fact that Palermo's report failed to corroborate Lichty's claim that the C.I. told Palermo the male was wearing a fanny pack with the gun inside it. Rather, the judge found the report "consistent with what Detective Lichty testified to on the date of the motion hearing." (2T 15-19 to 15-23)

## **LEGAL ARGUMENT**

### **POINT I**

**THE TRIAL COURT ERRED IN DENYING SUPPRESSION, BECAUSE POLICE DID NOT HAVE REASONABLE SUSPICION TO HANDCUFF AND FRISK DEFENDANT AFTER REMOVING HIM FROM A CAR STOPPED FOR A SEATBELT VIOLATION. (Da 6; 1T 69-13 to 82-17) ALTERNATIVELY, THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR RECONSIDERATION. (Da 7; 2T 14-14 to 20-7)**

Officer Lichty did not have reasonable suspicion to believe Love was armed and dangerous when he removed Love from the Kia and subjected him to a pat-down search for weapons. Therefore, the gun and drugs recovered from Love's bag must be suppressed. U.S. Const. amends. IV and XIV; N.J. Const. art. I, par. 7.

Under both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution, "searches and seizures

conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Elders, 192 N.J. 224, 246 (2007). "People, generally, are free to go on their way without interference from the government. That is, after all, the essence of the Fourth Amendment -- the police may not randomly stop and detain persons without particularized suspicion." State v. Shaw, 213 N.J. 398, 409-10 (2012) (citing Terry v. Ohio, 392 U.S. 1, 9, 27 (1968)). Consequently, "the State bears the burden of proving by a preponderance of the evidence that [the] warrantless search or seizure '[fell] within one of the few well-delineated exceptions to the warrant requirement.'" Ibid. (quoting State v. Pineiro, 181 N.J. 13, 19-20 (2004)).

One such exception is the protective frisk for weapons. Under the federal and New Jersey constitutions, the police may conduct a protective frisk for weapons when they have reasonable suspicion that a weapon may be found on that person. Terry v. Ohio, 392 U.S. 1, 26-27 (1968). An officer is permitted "to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." State v. Roach, 172 N.J. 19, 27 (2002) (quoting Terry, 392 U.S. at 23). That is, an officer may "conduct 'a carefully limited search of the outer clothing'" to determine whether weapons are present. Id. (quoting Terry, 392 U.S. at 30). "[W]hether there is good cause for an officer to make a protective search incident to an investigatory stop is a

question separate from whether it was permissible to stop the suspect in the first place”). State v. Thomas, 110 N.J. 673, 678-79 (1988). “[T]o conduct a protective search, an officer must have a ‘specific and particularized basis for an objectively reasonable suspicion that defendant was armed and dangerous.’” Roach, 172 N.J. at 27 (quoting Terry, 392 U.S. at 30)(emphasis omitted).

A tip from a confidential informant can furnish reasonable suspicion for an investigatory stop or pat-down search for weapons, provided the tip is reliable. State v. Birkenmeier, 185 N.J. 552, 562 (2006). The reliability of a tip from a C.I. is assessed under a totality of circumstances test. State v. Smith, 155 N.J. 83, 92 (1998). “An informant's ‘veracity’ and ‘basis of knowledge’ are two highly relevant factors under the totality of the circumstances.” State v. Zutic, 155 N.J. 103, 110 (1998)(citing Smith, 155 N.J. at 93).

In this case, there was no dispute that Lichty had no personal knowledge of the C.I.’s history or what the C.I. told Palermo about the male in the Kia. Rather, Lichty’s testimony regarding the C.I. was based entirely on either hearsay – what Palermo told Lichty regarding the C.I.’s past performance – or hearsay within hearsay – what Palermo told Lichty the C.I. told him. While N.J.R.E. 101(a)(3)(E) permits the court to rely on hearsay at a suppression hearing, the court may do so only when the hearsay is “trustworthy.” See also State v. Novembrino, 105 N.J. 95, 111 (1987)(noting that an informant’s tip,

despite being hearsay, may be considered by the motion court “so long as a substantial basis for crediting [it] is presented”).

Here, Love challenged the trustworthiness of Lichty’s claim that Palermo advised the C.I.D. units that the male in the Kia was “wearing a fanny pack with a .44 magnum inside of it,” because that detail was not included in the offense report that Lichty wrote on the day of the incident. Rather, according to Lichty’s report, the only information that the C.I.D. units received about the male in the Kia was that “he was in possession of a firearm.” (Da 25) In the absence of a report by Palermo confirming that the male in the Kia was said to be wearing a fanny pack with a .44 magnum inside it, and in light of Lichty’s admission that he would have included those critical details in the report he authored (1T 41-3 to 41-25), the only reasonable inference to draw, Love argued, was that Palermo never relayed those details to the C.I.D. units because the C.I. never relayed those details to him.

Love also challenged the trustworthiness of Lichty’s claim that Palermo received information from the C.I. on 20 prior occasions and found the C.I. to be reliable 75 percent of the time, because, again, that information was not contained in Lichty’s report. As Love pointed out, the offense report did not even indicate that the information about the male in the Kia came from a known informant.



Despite the compelling arguments advanced by Love, the trial court found Lichty's testimony entirely credible. Assuming, arguendo, the trial judge did not err in overlooking the glaring problems with Lichty's testimony, her decision denying suppression must still be reversed, because the State's evidence still fell short of reasonable suspicion. In other words, even if Palermo's supplemental report had been produced in a timely fashion and had confirmed Lichty's claims that the C.I. told Palermo about the fanny pack and that the C.I. had a 75-percent rate of reliability, the totality of the circumstances did not sufficiently establish the informant's veracity or basis of knowledge. Alternatively, the trial judge erred in denying Love's motion for reconsideration, because, at that point, it was known to the judge that Palermo's supplemental report did not confirm Lichty's claims regarding the fanny pack or the C.I.'s rate of reliability.

**A. The State Did Not Sufficiently Establish The Informant's Veracity Or Basis Of Knowledge.**

An informant's veracity may be established by "demonstrating that the informant proved to be reliable in previous police investigations." State v. Sullivan, 169 N.J. 204, 213 (2001). "However, under the totality of the circumstances, 'past instances of reliability do not conclusively establish an informant's reliability.'" Ibid. (quoting Smith, 155 N.J. at 94).

In this case, Lichty's testimony that the C.I. provided information on 20 prior occasions and was 75 percent reliable did not establish the C.I.'s reliability

for a number of reasons. First, because Lichty had no personal knowledge of the informant, he was unable to provide “first-hand verification of the informant’s prior veracity.” State v. Williams, 364 N.J. Super. 23, 33 (2003). Second, while Lichty’s testimony suggested that the C.I. was reliable on 15 prior occasions, it also suggested that the C.I. was not reliable on five others. Third, Lichty’s assertion that the C.I. was “reliable” in the past was a “conclusionary statement” for which Lichty provided no basis: Lichty provided no details as to the C.I.’s motives or the nature of the information provided by the C.I. in the past; nor did Lichty explain how the C.I. was reliable on those prior 15 occasions – it was not even clear if the standard of reliability was arrest, conviction or something else – or, more importantly, how the C.I. was not reliable on the other five. Zutic, 155 N.J. at 111 (finding informant’s veracity had not been sufficiently established where officer offered only a “conclusory statement” that “the informant was ‘reliable’ without indicating what made him think so”).

In Williams, 364 N.J. Super. 23, this Court found an officer’s similarly conclusory assertion of reliability insufficient to satisfy the veracity prong. In that case, the officer testified that the informant provided “positive” information on seven to ten cases in the past, her information had been relayed to other law enforcement agencies and led to arrests, and the information she provided pertained to drugs. Id. at 33. The officer, however, failed to “specif[y] the nature

of the information provided by the informant, the ‘agencies’ to which it was transmitted, the names of the targets of their investigations ... or whether any had been convicted of crimes following arrests resulting from those investigations.” Ibid. The Court in Williams found the officer’s testimony “insufficient to permit any independent evaluation by the court.” Id. at 34. Likewise, Lichty’s testimony, which contained even less detail than the officer’s in Williams, did not provide a sufficient basis for independent evaluation by the trial judge. Thus, the State failed to sufficiently demonstrate the C.I.’s veracity.

As to the C.I.’s basis of knowledge, the State’s evidence was equally deficient. Lichty had no idea how the C.I. learned the information. When the C.I.’s basis of knowledge is unknown, “it is especially important that the tip describe the accused’s criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual’s general reputation.” State v. Smith, 155 N.J. 83, 94 (1998)(internal quotation marks and citations omitted). “By providing sufficient detail in the tip or recounting information that could not otherwise be attributed to circulating rumors or be easily gleaned by a casual observer, an informant can implicitly disclose a reliable basis of knowledge as the foundation of the information related to the police.” Id. at 95. Similarly, “[p]redicting hard-to-know future

events” can also imply “that the informant derived that information directly as a witness or as one privy to a reliable witness or source.” Ibid. (emphasis in original).

State v. Birkenmeier, 185 N.J. 552 (2006), provides an example of the type of detail and predictive events that give rise to reasonable suspicion. In that case, a C.I. with demonstrated veracity

provided particularized information concerning defendant: defendant's name; defendant's address; defendant's physical description; the make, model and license tag number of defendant's car; the fact that defendant would be leaving his home at 4:30 p.m. to make a marijuana delivery; and the fact that defendant would be carrying the drugs in a laundry tote bag.

[Id. at 561.]

The Court found that the police had reasonable suspicion to stop defendant when, “[a]s the [C.I.] predicted, the police observed defendant leaving his home at 4:30 p.m., carrying a laundry tote bag, and driving away in the car identified by the confidential informant.” Ibid.

In this case, the tip contained no predictive events or hard-to-know details suggesting intimate familiarity with Love’s possession of the gun. The license plate number and location of the Kia were details available to any casual observer on the street, and the description of the gun as a .44 magnum concealed in a fanny pack does not imply that the C.I. “derived that information directly as a witness or as one privy to a reliable witness,” id. at 95, when the C.I.

provided absolutely no description of Love beyond “male.” Surely, if the C.I. had been privy to Love’s possession of the gun that day, the C.I. would have been able to provide some description of Love.

Because Lichty’s testimony did not sufficiently establish the C.I.’s veracity or basis of knowledge, the trial court’s order denying suppression must be reversed.

**B. Because It Was Clear From Palermo’s Report That The C.I. Did Not Describe The Male In The Kia As Wearing A Fanny Pack, The Trial Court’s Finding That Palermo’s Report Was Consistent With Lichty’s Testimony Was So Clearly Mistaken That The Order Denying Reconsideration Must Be Reversed.**

In his offense report, Lichty stated that before the motor vehicle stop the C.I.D. units received information that a male in a Kia was “in possession of a firearm.” (Da 25; 1T 22-5 to 22-11) At the motion hearing, which took place months later, Lichty testified that the C.I.D. units received from Palermo information that the male in the Kia was “wearing a fanny pack with a .44 magnum inside of it.” (1T 8-5 to 8-15; 1T 26-18 to 26-25) This was a critical discrepancy because, as Lichty testified, his basis for identifying Love as the subject of the tip was that Love “was wearing the fanny pack as described by the C.I.” (1T 14-16 to 14-19; 1T 26-18 to 26-25)

As Love argued below, Lichty’s failure to include in his report that critical detail – that the male with the gun was said to be wearing a fanny pack – casts

grave doubt on the credibility of Lichty's claim that Palermo relayed that detail to the C.I.D. units because it was part of the C.I.'s tip. Although Palermo was the only one with personal knowledge as to whether the C.I.'s tip had in fact contained that critical detail, the State did not call Palermo as a witness or produce Palermo's supplemental report. Despite the lack of corroboration for Lichty's incredible claim that he inexplicably left that critical detail out of his report, the court credited Lichty's testimony in its entirety.

In denying Love's motion for reconsideration, trial court continued to credit Lichty's testimony in its entirety even though Palermo's supplemental report had finally been produced and failed to corroborate Lichty's testimony regarding the fanny pack. Rather, like the offense report that Lichty wrote on the day of the incident, Palermo's supplemental report indicated that Palermo received information from "a confidential source stating that a male inside a gold Kia Optima was armed with a firearm." (Da 26) It is clear from that Palermo's supplemental report that the C.I. did not describe the male in the Kia as "wearing a fanny pack with a .44 magnum inside of it," as Lichty claimed at the suppression hearing.

Nevertheless, in denying Love's motion for reconsideration, the trial court found that Palermo's supplemental report was "consistent with what Detective Lichty testified to on the date of the motion hearing." (2T 15-19 to 15-23) That

finding was "so clearly mistaken" that the court's order denying reconsideration must be reversed. State v. Gamble, 218 N.J. 412, 425 (2014)(observing that a reviewing court should not disturb the trial court's factual findings unless they are "so clearly mistaken that the interests of justice demand intervention and correction")(internal quotation marks and citation omitted). Additionally, because the credibility of Lichty's testimony regarding the contents of the tip was critical to the validity of the frisk, the evidence found in the bag must be suppressed as the fruit of an illegal search. Wong Sun v. United States, 371 U.S. 471 (1963).

### **CONCLUSION**

For the reasons set forth above, the trial court's order denying defendant's motion to suppress evidence must be reversed. Alternatively, the trial court's order denying reconsideration must be reversed and the evidence suppressed.

Respectfully submitted,

JOSEPH E. KRAKORA  
Public Defender  
Attorney for Defendant-Appellant

By: /s/ Alyssa Aiello  
ALYSSA AIELLO  
Assistant Deputy Public Defender  
Attorney No. 054081991

DATED: December 31, 2023



**Office of the Camden County Prosecutor**

200 Federal Street, Camden, New Jersey 08103  
Telephone: 856-225-8400 Fax: 856-963-0080



**Grace C. MacAulay**  
Camden County Prosecutor

**Timothy K. Chatten**  
First Assistant Prosecutor  
**Tracy A. Cogan**  
Deputy First Assistant Prosecutor  
**Kelly A. Testa**  
Deputy First Assistant Prosecutor

**Robert M. Ferris**  
Chief of Detectives  
**Michael G. Mangold**  
Chief of Staff  
**Terry M. King**  
Deputy Chief of Detectives

[heink@ccprosecutor.org](mailto:heink@ccprosecutor.org)

ATTORNEY ID: 910402012

Kevin Hein  
Assistant Prosecutor  
Of Counsel and on the Letter-Brief  
Motions and Appeals Unit

May 23, 2024

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LETTER-BRIEF IN LIEU OF FORMAL BRIEF  
ON BEHALF OF THE STATE OF NEW JERSEY

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Honorable Judges of the Superior Court of New Jersey Appellate Division  
Richard J. Hughes Justice Complex  
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent)

v.

Robert Love (Defendant-Appellant)

Docket No. A-003635-22T4

Criminal Action: On Appeal from a judgement of conviction of the  
Superior Court of New Jersey, Law Division, Camden County.

Indictment No.: 22-08-02442-I

Sat Below: Hon. Yolanda C. Rodriguez, J.S.C

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Honorable Judges:

Pursuant to R. 2:6-2(b) and R. 2:6-4(a) this letter-brief is submitted on behalf  
of the State of New Jersey.



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COUNTERSTATEMENT OF PROCEDURAL HISTORY<sup>1</sup>

The State respectfully relies on defendant's Statement of Procedural History. (Db1).

COUNTERSTATEMENT OF FACTS

This appeal emanates from the denial of defendant's motion to suppress a firearm found in the fanny pack he was wearing during a motor vehicle stop. On February 16, 2023, a motion to suppress hearing was held before the Hon. Yolanda C. Rodriguez, J.S.C. where Officer Michael Lichty of the Camden County Police Department was the sole witness. The court denied the motion. The following is a summary of the pertinent evidence and the court's decision.

On the evening June 6, 2022, Officer Lichty was assigned to the Community Impact Division receiving information from the Shooting Response Team and the Narcotics and Gang Units and acting as their marked uniform police presence on the street. (1T5-14 to 6-22). Officer Lichty explained that as the street officer, Narcotics and Gang Unit detectives relied on him to conduct stops for them based on information they relayed. (1T38-5 to 12). Officer Lichty is a seven-year veteran of

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<sup>1</sup>The State relies on defendant's Table of Citations (Dbii), with the following addition:

“Db” refers to defendant's appellate brief.

“Da” refers to defendant's appendix.

the Camden County Police Department and at the time of the motion hearing, a detective in the Narcotics and Gang Unit privy to CI information. (1T4-13 to 21).

On that evening Detective Palermo of the Narcotics Unit relayed to Officer Lichty a tip from a confidential informant (CI) that a male in possession of a firearm was riding around Collins Road and Alabama Road, in a gold Kia sedan with a license plate beginning in "L85." (1T8-2 to 14, 22-4 to 11). The CI further indicated that the male was inside the vehicle wearing a fanny pack with a .44 magnum inside of it. (1T8-14 to 15). Officer Lichty later learned that this CI had provided around twenty tips before this one, and about seventy-five percent of them were reliable. (1T9-3 to 12). He did not know when Detective Palermo received the tip, but based on his training and experience, he was confident it was immediately before Detective Palermo relayed the information to him given the nature of the tip. (1T23-9 to 10). At the time he received the tip from Detective Palermo, Officer Lichty did not know the identity of the CI because it was his role only to act as the detective's arms in the field. (1T38-5 to 39-7). However, by the time he testified before the trial court, Officer Lichty knew firsthand about the CI's prior history of reliability. (1T39-1 to 7).

Immediately after receiving the tip, Officer Lichty went to the indicated area and observed in his rearview mirror the Kia sedan behind him at a stop sign at Kearsarge Road and Collins Road. (1T13-9 to 18). It was a gold Kia sedan with a

license plate beginning in “L85.” (1T13-19 to 22). Noting the occupants were not wearing seatbelts, Officer Lichty, along with his sergeant in a separate marked vehicle, conducted a motor vehicle stop.<sup>2</sup> (1T14-9 to 13). There were two occupants in the vehicle. (1T14-23 to 24). Officer Lichty approached the front passenger side of the vehicle and saw the passenger was wearing a fanny pack, just as described by the informant. (1T14-16 to 19). The passenger was defendant, Robert Love.

In addition to observing the fanny pack, Officer Lichty noted defendant was holding it tight to his chest in an unnatural manner and appeared nervous. (1T15-18 to 20, 33-1 to 4). Defendant had a phone in his left hand and a cigarette in his right hand, and yet used his arms to hold the bag close to his body as if to conceal a bulge. (1T33-22 to 34-4). Officer Lichty demonstrated to the trial court how defendant held the bag furtively to conceal or hide something he did not want seen. (1T40-14 to 24). Based on his training and experience, Officer Lichty believed this unnatural furtive position and nervousness, in addition to the tip received, was consistent with someone attempting to conceal a firearm. (1T15-21 to 24).

Believing defendant probably armed and dangerous, Officer Lichty removed defendant from the vehicle handcuffed him, and conducted a frisk. (1T16-2 to 10). He immediately recognized a firearm inside the fanny pack still on defendant’s body.

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<sup>2</sup> Defendant does not dispute the lawfulness of the motor vehicle stop. (1T78-22 to 79-6).

(1T16-10 to 17). Officer Lichty removed the fanny pack and secured it in a locked box in his marked patrol vehicle placed defendant under arrest. (1T16-20 to 25). In order not to contaminate the evidence, officers left the handgun inside the fanny pack until CSI could properly inventory and catalog the evidence. (1T21-15 to 24).

At the conclusion of Officer Lichty's testimony and arguments, the trial court issued an oral decision denying defendant's motion.

The trial court found his testimony to be credible. (1T70-1 to 7). The court first found that Officer Lichty lawfully ordered defendant out of the vehicle. (1T80-8 to 15). The court credited Officer Lichty's testimony that his role in the Community Impact Division was to respond to information received by Narcotics detectives. "They're the ones in the trenches, so to speak[,]” the court found. (1T71-19 to 25). "They're the ones on the front lines who have to respond to the information they're receiving.” (1T71-25 to 72-2). Yet, at the time of his testimony, the court credited Officer Lichty's testimony regarding the CI's past reliability since he is now privileged with such information. (1T72-11 to 20). As such, the court found it proper for Officer Lichty to rely on the CI tip, given the CI's history of reliability and the tip's corroborated detail, including a description of the vehicle and license plates that matched the CI's information, the location of the vehicle, and a male inside wearing a fanny pack. (1T72-21 to 73-2, 73-14 to 24, 79-22 to 80-5). In addition, the court found it "reasonable and logical" that the CI tip was relayed to Officer Lichty shortly

after it was received by Detective Palermo, since to sit on such information without action would be contrary to the stated purpose and mission of these units working together. (1T74-8 to 22).

Moreover, the court found defendant's furtive movements holding the fanny pack close to his body and nervousness added to Officer Lichty's reasonable suspicion. (1T80-5 to 7). Based on the court's viewing of Officer Lichty's demonstration on the stand and the body-worn camera, the court emphasized defendant's position in the front passenger seat "with his arm against his chest as if pressing . . . the fanny pack on his chest. . . . [with] his right arm and hand [] elevated a little . . . [and] a cigarette in the right hand." (1T75-24 to 76-8). The court credited Officer Lichty's training and experience, reasonably believing defendant's pressing down on the bag with his left was an attempt to conceal any bulges in it, and trying to block the officer's view with his right hand holding the cigarette. (1T76-9 to 18). Based on these facts, in their totality, the court found a heightened awareness of danger existed "that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to leave the car." (1T79-13 to 80-15). The court stressed that

it's not just one thing alone, it's not just because [Officer Lichty] believed the defendant is nervous, it's not just because [Officer Lichty] see the defendant with a fanny pack, it's not just because [Officer Lichty] even that this is a Kia Optima, happens to be in the area where the [CI] reported an individual with a handgun, but viewing it

altogether, and as one can see from the video, [Officer Lichty] believes that the defendant is armed and dangerous[.]

[(1T77-7 to 17).]

The court also concluded Officer Lichty lawfully frisked defendant. (1T81-9 to 16). Relying on the “detailed tip, [Officer Lichty’s] observations of the defendant’s furtive movements, [and Officer Lichty’s] view and experience finding the defendant to be nervous” together, under the totality of the circumstances, led to an objectively reasonable basis to believe defendant was armed and dangerous. (1T81-9 to 16). Finally, the court found the inventory search of the bag was lawful.<sup>3</sup> (1T81-17 to 82-12).

For all these reasons, the court found the State met its burden by a preponderance of the evidence that defendant was lawfully detained and frisked without a warrant. (1T82-13 to 17).

On May 26, 2023, Judge Rodriguez heard and denied defendant’s motion to reconsider. Defendant argued that the court improperly relied and weighted hearsay testimony regarding the CI’s tip relayed to Officer Lichty by Detective Palermo.<sup>4</sup>

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<sup>3</sup> Since the inventory search is not raised on appeal, it is not detailed in the State’s summary of facts.

<sup>4</sup> Defendant further argued that the State committed a discovery violation and violated defendant’s right to fundamental fairness by failing to turn over Detective Palermo’s supplemental report. The court rejected this argument given the State’s multiple attempts to retrieve the report prior to the hearing and because the report

The court reiterated its reasons for finding Officer Lichty credible, including his testimony regarding the CI's tip, as well as the CI's history of reliability known to Officer Lichty at the time of the hearing. (2T16-13 to 17-19). The court re-emphasized the detail in the tip that matched Officer Lichty's observations, including the model and color vehicle at a particular location bearing a license plate beginning with "L85." (2T17-19 to 18-3). The court restated that it found it credible that the tip was received just before it was relayed to Officer Lichty, given the purpose and mission of these units working together. (2T18-4 to 21). The court further echoed its initial decision by emphasizing Officer Lichty's credible observations, consistent with its review of the body-worn camera and Officer Lichty's in-court demonstration, that defendant's furtive movements with his arms on his bag and nervousness added to the suspicion and reliability of the CI's tip. (2T18-23 to 19-18). In sum, the court found the motion was properly denied. (2T19-25 to 20-7).

This appeal follows.

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was consistent with Officer Lichty's testimony at the hearing. (2T14-22 to 16-12). Defendant does not raise the alleged discovery violation on appeal.



LEGAL ARGUMENT

POINT I: THE TRIAL COURT PROPERLY DENIED DEFENDANT’S MOTION TO SUPPRESS EVIDENCE BECAUSE DEFENDANT’S REMOVAL FROM THE VEHICLE AND SUBSEQUENT FRISK WERE LAWFUL BASED ON THE TOTALITY OF THE CIRCUMSTANCES FOLLOWING AN UNDISPUTED LAWFUL MOTOR VEHICLE STOP. (Da7; 2T14-14 to 20-7)

The State respectfully urges this Court to affirm the trial court’s decision to deny defendant’s motion to suppress because officers had the requisite heightened caution to request defendant step outside the vehicle and reasonable suspicion to perform a frisk under the totality of the circumstances. Defendant alleges that the trial court improperly denied his motion to suppress evidence, arguing that the State failed to establish the CI’s veracity of basis of knowledge and that court’s finding that Officer Lichty’s hearsay testimony was consistent with Detective Palmero’s report was clearly mistaken necessitating reversal. (Db10-14). However, the trial court properly found and the record reflects that law enforcement had reasonable, articulable facts that the defendant was armed to support defendant’s removal from the vehicle and subsequent frisk.

**A. Standard of review.**

The “standard of review on a motion to suppress is deferential.” State v. Nyema, 249 N.J. 509, 526 (2022). “[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so

long as those findings are supported by sufficient credible evidence in the record.” State v. Ahmad, 246 N.J. 592, 609 (2021) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). Reviewing courts will “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.’ ” Nyema, 249 N.J. at 526 (quoting Elders, 192 N.J. at 244). Furthermore, higher courts review “[a] trial court’s legal conclusions ... and its view of ‘the consequences that flow from established facts,’ ... de novo.” Id. at 526-27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

The general rule as to the admission or exclusion of evidence is that “[c]onsiderable latitude is afforded a trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion.” State v. Feaster, 156 N.J. 1, 82 (1998), cert. denied, 532 U.S. 932 (2001). Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless “the trial court’s ruling ‘was so wide of the mark that a manifest denial of justice resulted.’” State v. Marrero, 148 N.J. 469, 484 (1997) (quoting State v. Kelly, 97 N.J. 178, 216 (1984)).

**B. The requisite heightened caution was established under the totality of the circumstances to remove defendant from his vehicle.**

It is a well-established principle that a police officer may order a driver out of a vehicle during a traffic stop. Pennsylvania v. Mimms, 434 U.S. 106, 98 (1977). In Mimms, the United States Supreme Court held that no Fourth Amendment violation occurs when an officer orders a driver out of his vehicle following a lawful traffic stop, even where the officer has no reason to suspect foul play at the time of the stop. Id. at 109. The Court reasoned that, given the inherent and documented danger associated with conducting traffic stops, “what is at most a mere inconvenience [to the driver] cannot prevail when balanced against legitimate concerns for the officer’s safety.” Id. at 111.

However, in State v. Smith, the Supreme Court of New Jersey declined to extend the Mimms per se rule to passengers. 134 N.J. at 618. Rather, the Court held that “a police officer can “remove passengers only when the circumstances present reason for heightened caution.” State v. Bacome, 228 N.J. 94, 104 (2017) (reaffirming the Smith heightened-caution standard for removing passengers). An officer must articulate “facts in the totality of circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car.” State v. Smith, 134 N.J. at 618. “An “officer need not point to specific facts that the occupants are ‘armed and dangerous,’” as the officer would under Terry v. Ohio, 392 U.S. 1 (1968), to justify conducting a

protective pat-down for a weapon.” State v. Carrillo, 469 N.J. Super. 318, 335 (2021).<sup>5</sup> The fact that a suspect’s behavior may be consistent with innocent behavior does not control the analysis. State v. Mann, 203 N.J. 328, 338 (2010); See also State v. Arthur, 149 N.J. 1, 11-12 (1997).

Credible tips are often the basis of reasonable suspicion. See State v. Basil, 202 N.J. 570, 586 (2010). In determining whether a tip is sufficient to espouse reasonable suspicion, courts consider the basis and extent of the informant’s knowledge. See State v. Rodriguez, 172 N.J. 117 (2002). Tips are at their highest point of reliability when they are not made anonymously. See Basil, 202 N.J. 570, 586 (2010) (indicating no need for officers to corroborate tips when informant is named). Officers may presume that those providing tips are reliable. See id. (discussing heightened responsibility for informants when they are named); see also State v. Gamble, 18 N.J. 412, 423 (stating 911 calls are more reliable because of ability to identify caller). But See Florida v. J.L., 529 U.S. 266, 274 (2000) (anonymous tip alone not enough to reach level of reasonable suspicion). This is because informants whose names are available face a serious risk committing a crime if they provide false information. See Id. Officers have a duty to fully

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<sup>5</sup>In holding that the heightened-caution standard for removing passengers requires more than the per se rule for removing drivers, but less than the Terry standard, the Court noted, “We adopt this lesser standard because of the need to protect police officers and because of the minimal intrusion the requirement to exit the car imposes on the passenger.” Smith, 134 N.J. 599 at 618.

investigate these credible tips. See State v. Padilla, 321 N.J. Super. 96 (App. Div. 1999).

When the information provided to police is from a known police informant, the reliability of the informant is judged by an indicia of the informant's veracity and an analysis of the informants basis of knowledge. See State v. Keyes, 184 N.J. 541, 555-556 (2005). The veracity factor may be satisfied by demonstrating that this particular information has been proven as reliable in the past. See State v. Sullivan, 169 N.J. 204 (2001). Under the "basis of knowledge" prong, a court must consider whether "the information was obtained in a reliable way." State v. Smith 155 N.J. 83, 94 (1998). In making this determination, courts look to the tip itself, as "the nature and details revealed in the tip may imply that the informant's knowledge of the alleged criminal activity is derived from a trustworthy source." Ibid. In the alternative, when the tip is from an anonymous source or the details of a tip alone do not establish a basis of knowledge, the tip must be verified by some corroborative effort to support its assertion of illegality, not just its inclination to identify a determinate person. See State v. Rodriguez, 172 N.J. 117 (2002).

In State v. Mai, the Supreme Court of New Jersey held that under the totality of the circumstances officers had established facts that warranted a heightened awareness of danger permitting the removal of the passenger from the motor vehicle. 202 N.J. 12, 23-24 (2010). In Mai, officers were notified via radio transmission that

there was a man with a gun, wearing a black coat and black mask, located at a specific intersection. Id. at 14. Officers responded to the location and observed a vehicle containing five occupants double parked and performed a stop based on the traffic violation. Ibid. As officers approached the vehicle, they observed the passengers moving around inside but were unable to see what they were doing. Id. at 17. Due to the inability to see the occupants movements, the officer opened the vehicle door and observed that one of the men, a passenger in the vehicle, matched the description of the man with the gun and asked him to step out of the vehicle. Id. at 15. When the man stepped out, officers were able to see a firearm on the floor of the vehicle. Ibid. The Court found that under the totality of the circumstances that were before the officers, including the furtive movements of the occupants, the time of day, and the tip regarding the firearm, satisfied the heightened caution standard to warrant the removal of the passenger from the vehicle. Id. at 23.

The State submits that the present case before this Court is analogous with Mai and that officers were justified in removing the defendant passenger from the vehicle due to heightened caution under the totality of the circumstances. 202 N.J. 12, 23-24 (2010). First, Officer Lichty was relayed a tip that a male in a Kia Optima bearing New Jersey tags, with the first three characters 'L85', was in possession of a firearm held inside a fanny pack around Collings Road and Alabama Road. At the time of the hearing, Officer Lichty was able to testify from personal knowledge

regarding the CI's history of past tips and reliability. (1T9-3 to 12). That he did not have this information at the time he removed defendant from the vehicle is not problematic, since "[i]t is understood 'that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.'" State v. Crawley, 187 N.J. 440, 457 (2006) (quoting United States v. Robinson, 536 F.2d 1298, 1299 (9th Cir.1976)). It is of no moment that Officer Lichty at the time of the stop had not spoken to the CI directly, since it was objectively reasonable for him to act on the information he received from his fellow officer. To hold otherwise would eviscerate officer's ability to share information and act accordingly. Moreover, because Officer Lichty at the time of his in-court testimony did have personal knowledge regarding the CI's past performance, his testimony was sufficient to establish the CI's veracity. It was not an abuse of discretion for the trial court to accept that information.

The State concedes that this CI tip alone would not have raised a sufficient basis to pull defendant, a passenger, from the vehicle. However, the court below relied on much more than just the tip. Immediately after receiving the tip information from Detective Palmero, Officer Lichty observed the identified vehicle in the described area and noticed that the occupants were in violation of the motor vehicle

code due to their failure to wear seatbelts. Due to this motor vehicle violation, officers conducted a lawful stop. Officers approached the vehicle and engaged the occupants. While Officer Lichty was speaking with the defendant passenger, he noticed, consistent with the tip, the heavily weighed down crossbody fanny pack on defendant's person. In addition to the officer's observations of the bag's appearance, the defendant was holding the bag tight to his chest and appeared visibly nervous. Officer Lichty described the manner as furtive and unnatural, and that based on his training and experience, consistent with someone trying to hide what was inside. The court properly weighed Officer Lichty's testimony and in-court demonstration, together with the body-worn camera footage, and found it credible.

One must only imagine what an officer is to do under such circumstances. After responding to a tip from a previously reliable CI that was corroborated by (1) the vehicle description; (2) matching registration numbers; (3) location; and (4) a male inside wearing fanny pack, and then witnesses the furtive gestures and nervousness consistent with someone trying to conceal something dangerous, the officer, for his own protection, must be permitted to briefly remove that passenger from the vehicle. Simply put, these facts in the totality of circumstances created in Officer Lichty a heightened awareness of danger that warranted securing the scene in a more effective manner by ordering defendant out the car. See State v. Smith, 134 N.J. at 618.



Defendant argues that the court below erred in accepting Officer Lichty's testimony because it contained details not included in the reports. Contrary to defendant's claim, the court correctly concluded after reviewing the reports and Officer Lichty's testimony that they were "consistent" and "nothing contradicted." (2T15-19 to 24). While the supplemental report does indicate the tip included mention of the fanny pack, that fact is not contradictory but merely missing. In other words, the report did not indicate the CI said he was wearing some other type of bag, or that the gun was in his waistband. The report is not evidence, but merely a tool to capture events and refresh recollection. Defendant effectively cross examined Officer Lichty regarding the information missing in the report; however, given the trial court's opportunity to hear and see the witness and to have the "feel" of the case, which a reviewing court cannot enjoy, and the considerable latitude it is afforded in making credibility determinations, the court below reasonably exercised its discretion in accepting Officer Lichty's testimony even though some information was not contained within the reports.

**C. The Terry Frisk for weapons was lawful.**

A "pat-down," commonly referred to as a "Terry frisk," is generally permitted only when an officer has "an objectively reasonable suspicion that a suspect is armed and dangerous." State v. Nishina, 175 N.J. 502, 515 (2003). Terry directs that courts measure the reasonableness of a pat-down incident to a lawful investigatory stop

with an objective standard, judging the reasonableness of the pat-down within the context of the circumstances confronting the police officer. State v. Thomas, 110 N.J. 673, 679 (1988). The pat-down is reasonable only if “a reasonably prudent man in the circumstances would be warranted in his belief that his safety or that of others was in danger.” State v. Valentine, 134 N.J. 536, 543 (1994) (quoting Terry, 392 U.S. at 27).

In making the determination, however, “the officer need not be absolutely certain that the individual is armed.” Terry, 392 U.S. at 27. Even in situations in which an officer does not believe a suspect is engaged or about to become engaged in violent criminal activity, the right to frisk for weapons during a permissible investigatory stop is frequently automatic where a police officer has a specific and objectively-credible reason to believe that the suspect is armed. See Adams v. Williams, 407 U.S. 143, 146–47 (1972) (upholding protective search based on informant's tip that suspect was carrying “a gun at his waist”). Indeed, there are many instances where the right to conduct a protective search of an individual flows directly from the same justification for the investigatory stop. See State v. Privott, 203 N.J. 16, 30 (2010); State v. Ascencio, 257 N.J. Super. 144, 147-149 (Law Div. 1992), aff'd 'o.b. 227 N.J. Super. 334 (App. Div. 1994), certif. den. 140 N.J. 278 (1995)

After the defendant stepped out of the vehicle, Officer Litchy performed a lawful frisk of defendant's crossbody bag that he was wearing. As previously stated, officers were notified that a male in that specific vehicle at that location was armed with a firearm inside his fanny pack. After conducting the stop for a motor vehicle violation, Officer Litchy observed defendant with the fanny pack across his body, as well as furtive movements and nervousness consistent with someone attempting to hide or conceal what was inside. Based on this, the officer frisked the crossbody bag and immediately identified, via plain feel, the firearm. Thus, after immediately identifying the object as contraband the crossbody bag was removed from defendant's person and lawfully seized. Since Officer Litchy had specific and objectively-credible reasons to believe that defendant was armed, the frisk was lawful.

Therefore, the State respectfully requests that this Court affirm the well-reasoned findings of the trial court and hold the seizure of the firearm was lawful.

CONCLUSION

For the foregoing reasons, the State respectfully submits that the trial court properly denied the defendant's motion to suppress evidence and urges this Court to affirm.

Respectfully submitted,

GRACE C. MACAULAY  
CAMDEN COUNTY PROSECUTOR  
ATTORNEY FOR PLAINTIFF-RESPONDENT

By: s/ Kevin J. Hein  
KEVIN J. HEIN  
ASSISTANT PROSECUTOR

KEVIN J. HEIN [ID:910402012]  
MOTIONS AND APPEAL UNIT  
CAMDEN COUNTY PROSECUTOR'S OFFICE  
200 FEDERAL STREET  
CAMDEN, NEW JERSEY 08103  
(856) 225-8400  
EMAIL: HEINK@CCPROSECUTOR.ORG

OF COUNSEL AND ON THE BRIEF

DATED: May 23, 2024