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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1308-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ELI E. WILEY, a/k/a  
ELIJA WILLIAMS WACK,

Defendant-Appellant.

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Submitted October 31, 2017 – Decided January 2, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Mercer County, Indictment No.  
15-03-0323.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Stefan Van Jura, Deputy Public  
Defender, of counsel and on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Arielle E. Katz,  
Deputy Attorney General, of counsel and on the  
brief).

PER CURIAM

After his motion to suppress was denied, defendant Eli E. Wiley pled guilty to second-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5(b). The trial court sentenced defendant to a five-year custodial term, with three and one-half years of parole ineligibility. Defendant appeals from the judgment of conviction dated August 10, 2016, and argues that the judge erred by denying his motion to suppress. We disagree and affirm.

I.

A Mercer County grand jury charged defendant with: second-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5(b) (count one); fourth-degree possession of hollow-nose bullets, contrary to N.J.S.A. 2C:39-3(f) (count two); and second-degree certain persons not to possess a firearm, contrary to N.J.S.A. 2C:39-7(b) (count three). Thereafter, defendant filed a motion to suppress the evidence seized after his arrest. Judge Peter E. Warshaw, Jr. conducted an evidentiary hearing on the motion.

At the hearing, the State presented testimony from Detective William A. Salhanek of the Trenton Police Department (TPD). Salhanek testified that on December 24, 2014, he was working in the TPD's Street Crimes Unit. At approximately 5:00 p.m., during a pre-deployment briefing, Salhanek was informed that on the

previous evening, shots had been fired during a home-invasion robbery on East State Street. Salhanek was told that there had been "a run-and-gun battle" in the streets, involving several suspects, and a large number of shots had been fired. During the briefing, no suspect was identified by name, but Detective Frederick Bender told Salhanek that at the time of the incident, he had seen a black male wearing camouflage clothing in the area.

Salhanek testified that later that evening, at approximately 11:00 p.m., the TPD dispatch received a call from a child reporting that intruders had entered the child's home on Chestnut Avenue, and the intruders were arguing with his parents. Patrol and street-crime units were dispatched to the residence.

The suspects attempted to flee from the rear of the dwelling and a street-crime officer reported over the radio that shots had been fired. Salhanek arrived at the home. The officers apprehended two suspects, but one suspect remained at-large. Salhanek was told that the missing suspect was a black male, who was wearing all dark clothing.

At approximately 1:23 a.m., Salhanek was patrolling in his police cruiser with his partner, TPD Officer Joseph D'Ambrosio, when they were waved down by a pedestrian who told the officers he had seen "a guy with a gun near the intersection of Hudson and

Hamilton." The informant said the person was a black male wearing camouflage and riding a bicycle.

Salhanek and D'Ambrosio drove down Hudson Street towards Hamilton Avenue and came to a stop sign. They looked to the left and observed a person, who was later identified as defendant, "coming between two cars that were parked on the side of Hamilton Avenue." Salhanek testified that defendant "fit the description that was given to [him] by the man that had flagged [him] down." Defendant was wearing "camouflage coveralls" with a black, hooded sweatshirt underneath. He had a red and white ski mask on his head and a bicycle.

Salhanek and D'Ambrosio told defendant to show them his hands. Defendant showed his hands. He had a cell phone in one hand. According to Salhanek, defendant became confrontational. Defendant demanded to know why the police had stopped him, and made statements to the effect that the officers did not have probable cause. The officers told defendant to put his cell phone down, but defendant did not comply.

Salhanek was concerned defendant was attempting to text or call to "get some friends to the area." Salhanek told defendant to step toward a nearby parked pick-up truck so that the officers could conduct a pat frisk. When defendant stepped toward the truck, he placed his torso area, where the sweatshirt pouch was

located, in contact with the truck. Defendant pressed the front of his body against the pick-up truck. Salhanek testified that he heard "a thumping noise as if there was a heavy metallic object inside [defendant's] clothing."

Salhanek testified that he has participated in approximately one hundred gun investigations and the most common areas where handguns are stashed are in the "front waistband, front pocket of a hooded sweatshirt, front pockets of pants, quickly accessible [places], usually in the middle of the body torso area." Salhanek stated that after he heard the thumping noise, he and D'Ambrosio became more suspicious. Defendant remained confrontational and accused both officers of stopping him because he was black.

In an attempt to defuse the situation, Salhanek asked defendant his age. Defendant hesitated before answering, which further raised Salhanek's suspicions. D'Ambrosio began a pat frisk of defendant, but defendant was not compliant and turned his body away. The officers told defendant that if he did not stop turning away, they would arrest him for obstructing their investigation.

When D'Ambrosio again began to frisk defendant, he said "wait, I got to get this," and held up his cell phone as if he was answering a call, but the phone was not ringing. Salhanek became nervous and after giving defendant approximately three warnings, he placed defendant under arrest for obstruction. Because he was

resisting, the officers had to force defendant's hands behind his back. The officers then conducted a search of defendant, incident to his arrest. During the search, Salhanek located a gun in the front pocket of defendant's sweatshirt. The gun was loaded with eight total rounds of ammunition, two of which were hollow-point bullets.

Defendant called D'Ambrosio as a witness. D'Ambrosio stated that on December 24, 2014, he was assigned to Special Operations, and he was out in the area of Greenwood Avenue with Salhanek. He said that a pedestrian flagged them down and said there was a man with a weapon at Hamilton Avenue and Hudson Street. The officers drove down Greenwood Avenue, turned left onto Hudson Street, and continued down to Hamilton Avenue.

The officers came to a stop sign. D'Ambrosio looked to his left and saw defendant, who fit the description the pedestrian provided of a black male with camouflage clothing. D'Ambrosio noted that defendant had a cell phone, but he did not see a gun. The officers stopped their vehicle in front of defendant and got out to investigate. D'Ambrosio asked defendant to show his hands. Defendant had a cell phone in his right hand. D'Ambrosio told defendant to put his phone away.

D'Ambrosio started to pat frisk defendant. D'Ambrosio testified that defendant put his hands on top of the vehicle and,

as he did so, defendant thrust his torso into the vehicle. D'Ambrosio heard "a loud thump." He reached down to defendant's waistband area, and defendant tried to turn around and face the officers. D'Ambrosio told defendant to keep his hands on the top of the vehicle and stop turning around because he was obstructing the investigation. Defendant did not comply.

D'Ambrosio testified that defendant started to "manipulate" the phone in his right hand, but he did not make any movements to his waistband. D'Ambrosio instructed defendant to keep his hands on top of the vehicle and to stop moving. He told defendant if he did not comply, he would be arrested. Defendant told the officers they could not arrest him. At that point, D'Ambrosio placed defendant under arrest. He had to force defendant's hands behind his back to handcuff him.

## II.

Judge Warshaw filed a written opinion dated February 4, 2016, in which he found that Salhanek was a "highly credible witness who testified in a persuasive manner." The judge also found D'Ambrosio "highly credible and persuasive." The judge stated that both witnesses were straightforward and recalled the events of the night in question with sufficient clarity.

The judge found that upon considering the totality of the circumstances, the officers had objectively reasonable and

articulable suspicion to stop defendant. The judge noted that a pedestrian informant had informed the officers that he had seen an individual who was in possession of a weapon, and the officers had sufficient corroboration of the tip, "particularly in light of the totality of the circumstances." The evidence indicated that at the pre-deployment meeting on December 24, 2014, Salhanek had been informed that on the previous evening, a black male wearing camouflage clothing had been seen near a shooting on East State Street. In addition, the officers learned that a black male suspect wearing dark clothing remained at large after the incident on Chestnut Avenue, which took place earlier on the evening of December 24, 2014, and during which shots were fired.

The judge pointed out that defendant was in a high-crime area, which can be considered as part of the totality of circumstances. Unlike an anonymous caller who might telephone the police, a pedestrian had presented himself to the officers and did not conceal his identity. The judge found that the pedestrian was close enough to the suspect's location, and could have a sufficient basis to possess the knowledge he conveyed. The judge noted that the officers did not obtain the pedestrian's identity. The judge observed, however, that pursuing the investigation was "of higher priority than getting identification information about the pedestrian informant."



As further corroboration for the informant's tip, the judge noted that when the officers approached the intersection of Hamilton Avenue and Hudson Street, they observed defendant. He was the only person on the street at 1:30 a.m. on a cold winter morning. Defendant was exactly where the pedestrian said he would be, and he fit the description that the pedestrian had provided. He was a black male in camouflage clothing with a bicycle.

Judge Warshaw also found that the officers had reasonable suspicion to conduct a pat frisk of defendant. The judge noted that defendant immediately became confrontational and repeatedly refused to comply with the officers' direction that he stop using his cell phone.

Defendant became argumentative. When asked a question, defendant hesitated before responding, which Salhanek regarded as an attempt to buy time. Salhanek became increasingly concerned that defendant might be armed. The judge noted that defendant matched the description of the armed suspect who fled from a nearby crime scene earlier in the evening.

In addition, the judge concluded that the officers had probable cause to arrest defendant. The judge found that defendant had impeded the officers' efforts to conduct the pat frisk, and refused to comply with the officers' requests that he put down his phone. When defendant's torso came in contact with the truck, the

officers heard a thumping sound, which they immediately recognized as the sound of a gun hitting the metal of the truck. The judge found that defendant's arrest was lawful, and the officers validly conducted a search of defendant incident to the arrest.

The judge entered an order dated February 4, 2016, denying defendant's motion to suppress the physical evidence obtained in the search. On June 27, 2016, defendant pled guilty to count one, charging second-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5(b). He reserved the right to appeal from the denial of his motion to suppress. The court sentenced defendant on August 5, 2016. As noted, the court imposed a five-year term of imprisonment, with three and one-half years of parole ineligibility. This appeal followed.

On appeal, defendant raises the following single point:

THE FRISK OF DEFENDANT WAS UNLAWFUL BECAUSE THE POLICE POSSESSED NOTHING MORE THAN THE GENERIC "MAN WITH A GUN" ANONYMOUS TIP, WHICH WAS NOT CORROBORATED BY ANYTHING BUT INNOCENT DETAILS.

### III.

"Appellate review of a motion judge's factual findings in a suppression hearing is highly deferential." State v. Gonzales, 227 N.J. 77, 101 (2016) (citing State v. Hubbard, 222 N.J. 249, 262 (2015)). An appellate court is obliged to uphold a motion judge's factual findings so long as there is sufficient credible evidence

in the record to support the judge's findings. State v. Elders, 192 N.J. 224, 243 (2007). We will reverse only when the trial court's findings "are so clearly mistaken 'that the interests of justice demand intervention and correction.'" Id. at 244 (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

"The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution both guarantee '[t]he right of the people to be secure . . . against unreasonable searches and seizures[.]'" State v. Shaw, 213 N.J. 398, 409 (2012) (alterations in original) (quoting U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7). Warrantless searches and seizures by law enforcement officers are "presumptively invalid." State v. Pineiro, 181 N.J. 13, 19 (2004) (citing State v. Patino, 83 N.J. 1, 7 (1980)). The State has the burden of proving that such searches and seizures are "justified by one of the 'well-delineated exceptions' to the warrant requirement." Shaw, 213 N.J. at 409 (quoting State v. Frankel, 179 N.J. 586, 598 (2004)).

One exception to the warrant requirement is an investigatory stop as recognized in Terry v. Ohio, 392 U.S. 1, 20-22 (1968). "An investigatory police stop, sometimes referred to as a Terry stop, is permissible 'if it is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" Shaw,

213 N.J. at 410 (quoting Pineiro, 181 N.J. at 20). The standard for an investigatory stop "is less than the probable cause showing necessary to justify an arrest." Ibid.

During an investigatory stop, a police officer may conduct a protective search, also known as a pat-down or frisk, when the officer "has reason to believe that he [or she] is dealing with an armed and dangerous individual." Terry, 392 U.S. at 27. The court applies an objective test in deciding that issue, and must determine whether "a reasonably prudent man [or woman] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger." Ibid.

The determination is fact-sensitive and requires an evaluation of the "totality of the circumstances." Pineiro, 181 N.J. at 22. "An officer's experience and knowledge are factors courts should consider in applying the totality of the circumstances test." Ibid. (citing State v. Davis, 104 N.J. 490, 504 (1986)).

Furthermore, an officer may use information that the officer did not obtain first hand in determining whether to restrict an individual's liberty. Illinois v. Gates, 462 U.S. 213, 237-38 (1983). When evaluating information from a non-police source, facts pertaining to the veracity and reliability of the information

are part of the totality of the circumstances analysis. Id. at 238.

Anonymous tips are given less weight in establishing reasonable suspicion than tips by an individual who provides his or her name. State v. Rodriguez, 172 N.J. 117, 127 (2002). "To justify action based on an anonymous tip, the police in the typical case must verify that the tip is reliable by some independent corroborative effort." Ibid. This principle applies to a tip that someone is carrying a firearm, since there is no "man with a gun" exception to the corroboration requirement. Florida v. J.L., 529 U.S. 266, 271-72 (2000); State v. Richards, 351 N.J. Super. 289, 300-01 (App. Div. 2002).

On appeal, defendant argues that the record does not support the motion judge's conclusion that the officers had sufficient corroboration for the pedestrian's tip. Defendant notes that the testimony at the hearing indicated that on December 23, 2014, a person dressed in camouflage was seen in the area of a shooting. He asserts, however, that this incident took place on a different date and at a different location from the date and location of his stop.

Defendant also asserts that camouflage attire might have been prevalent in Trenton at the time. He notes he was not wearing all dark clothing during his encounter with the police on December 24,

2014. He therefore argues that he had no connection with the suspect from the incident that took place earlier in the evening on Chestnut Avenue, who remained at large.

Defendant further argues that the pedestrian who provided the officers with the tip was "effectively anonymous." He notes that the pedestrian spoke with Salhanek, but he provided no details other than that the person he saw with a gun was a black male. Defendant states that Salhanek had no way to re-establish contact with the pedestrian and could not assess his credibility.

In addition, defendant argues that the only corroboration for the pedestrian's tip was that the officers observed a man wearing camouflage with a bicycle at a particular location. Defendant asserts that reasonable suspicion requires that the tip be reliable in its assertion of illegality. He contends the only possible corroboration of illegality was that on the previous day, a man wearing some kind of camouflage was seen in the area of a shooting.

We are convinced, however, that the record supports Judge Warshaw's determination that the officers had sufficient independent corroboration of the tip that the officers received from the pedestrian, which justified the Terry stop of defendant. As we have explained, the judge noted that the pedestrian had gone out of his way to flag down the police to report that a black male

in camouflage was armed, and that the male was only several blocks away with a bicycle.

The officers spoke directly to the pedestrian, and while the pedestrian did not give the officers his name, they were able to assess his demeanor and credibility. The officers also found defendant in the place where the pedestrian said he would be found. He was the only person on the street at 1:30 a.m. on a cold winter morning. Defendant was partially dressed in camouflage and he had a bicycle.

Defendant also fit the description of the person who was seen in the vicinity of the shooting on East State Street on the previous evening. In addition, defendant was partially dressed in dark clothing, and the officers were aware that a black male in dark clothing remained at-large, following an incident earlier in the evening on Chestnut Avenue, where shots had been fired.

The judge also correctly ruled that Officer D'Ambrosio's pat-down frisk of defendant was valid because Salhanek and D'Ambrosio reasonably believed defendant was armed and dangerous. Furthermore, the record supports the judge's finding that the officers had probable cause to arrest defendant for obstructing their investigation, and properly conducted a search of defendant incident to his arrest.

Accordingly, we conclude there is sufficient credible evidence to support the trial court's determination that the State had proven by a preponderance of the evidence that the investigative stop, pat frisk, arrest, and search incident to the arrest were valid. Judge Warshaw correctly decided that the evidence seized was admissible.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION