SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1381-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KEREEM T. TAYLOR, a/k/a
KEREEN JOHNSON,
KEREEM JOHNSON,

Defendant-Appellant.

Argued May 10, 2023 – Decided July 26, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 19-06-1495.

Emma Ellman-Golan, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alison Perrone, Assistant Deputy Public Defender, of counsel; Emma Ellman-Golan, admitted pursuant to Rule 1:21-3(c), on the briefs).

Jason Magid, Assistant Prosecutor, argued the cause for respondent (Grace C. MacAulay, Camden County

Prosecutor, attorney; Jason Magid, of counsel and on the brief).

PER CURIAM

Defendant Kereem Taylor appeals from the September 15, 2020 order denying his motion to suppress evidence from a warrantless search, contending the officers lacked reasonable suspicion to stop him and subsequently pat him down. We affirm.

I.

We derive the facts from the suppression hearing.

On May 24, 2019 around 2:46 a.m., Camden County Police Department (Department) officer Peter Sanchez was on patrol in Camden when he heard the sound of a gunshot. He testified the sound was "[i]n the vicinity" but he was not able to discern a specific location. Approximately thirty seconds later, ShotSpotter[1] reported a detected gunshot. Sanchez stated he was patrolling in an area known for trafficking drugs and for violent crime arrests. Sanchez

[1] Sanchez explained ShotSpotter was a tool that uses "certain towers around the city that are tuned to differentiate a gunshot compared to other noises. And once it hears a gunshot, it[] [is] able to triangulate in the vicinity of where that gunshot was and relay that to whoever[] [is] using the application." The ShotSpotter "helps police respond quickly to what essentially would be dangerous situations with more accuracy to location, thus making it a safer . . . interaction, which is inherently a dangerous one."

reported hearing the gunshot over the radio and began to search the area to either locate a crime scene or any person who might have been shot.

Sergeant Brandon Galloza, a supervisor in the Department, heard Sanchez's report and became involved in the investigation. Galloza noticed a red truck parked in an open lot and approached it, but after speaking briefly to the individual sitting in the truck, he dismissed the individual as a possible suspect. However, the individual told Galloza he heard a gunshot and directed the officers to the area where he thought it came from. Galloza identified the location to the other officers as the "three hundred block."

Galloza also instructed Sanchez to speak to a potential witness at Project H.O.P.E., located nearby. There, Sanchez spoke with a custodial worker who confirmed he also heard the noise, describing it as "a gunshot or bang." The custodian said he saw a black man in a white t-shirt walking on the street. Sanchez reported the information over the radio. The custodian spoke in broken English.

Hearing the radio dispatches, Camden County sheriff's officer Robert Holland learned a person matching the description given by the custodian was walking towards Holland's location. Upon seeing the person, later identified as defendant, Holland determined he matched the given description, so he pulled

over his patrol car, got out, and approached defendant. Upon seeing Holland, defendant "immediately lift[ed] up his [t]-shirt and show[ed] [Holland] his waistband." Holland followed defendant, asking him general questions about where he was coming from and where he was going, which defendant did not directly answer. Holland testified he never instructed defendant to stop, but defendant stopped walking and sat down on a stoop.

After arriving at the scene, Galloza told the officers who had assembled near defendant to pat him down. Holland then began to administer the pat-down, instructing defendant to lift up his arms. As defendant did so, the officers noticed a bulge in defendant's front-right pocket, causing them to handcuff him. The officers then retrieved a black handgun from his pocket.

II.

Defendant was charged in an indictment with second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1), and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1).

Defendant moved to suppress the evidence seized during the pat-down. The court conducted a hearing over three days. The State played the body camera footage taken from Sanchez. This was the exchange between Sanchez and the custodian:

[CUSTODIAN]: I'm cleaning.

OFC. SANCHEZ: I know you're cleaning. Did you hear anything out here?

[CUSTODIAN]: Um.

OFC. SANCHEZ: Did you hear anything?

. . . .

[CUSTODIAN]: I hear a—[makes a clicking gesture with his finger][2]

OFC. SANCHEZ: Hear what?

[CUSTODIAN]: —shot.

OFC. SANCHEZ: Did you see anyone run?

[CUSTODIAN]: A shot—I inside the building when a shot. Later, one man come over here.

OFC. SANCHEZ: What[] [did] he look like?

[CUSTODIAN]: Yeah, he a man, black, like me, walking here.

OFC. SANCHEZ: Okay. Okay. You saw him walking?

[CUSTODIAN]: Yeah.

OFC. SANCHEZ: You did[] [not] see him running or nothing like that?

[CUSTODIAN]: Walking. T-shirt white.

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[2] This gesture is seen on the video recording.

On cross-examination, defense counsel asked whether the custodian was black. Sanchez replied he was not. Counsel then asked if Sanchez had "any idea" what the custodian meant when he said "black like me." Sanchez stated when the custodian pointed to himself and said "[b]lack like me," he was referring to skin tone color. Sanchez said "[the custodian] was a darker male."

Sanchez conceded that neither he, the other officers, nor the custodian saw defendant with a gun prior to the search, nor did they see anyone fire the suspected gunshot. He also conceded he did not see defendant participate in any illegal activity.

Holland testified that he recalled the description on the radio as "Black male, white shirt." After Holland encountered defendant and was following him, he was trying to get in front of defendant to see his right-hand side. He described defendant as "match[ing] [Holland's] pace and continually . . . turning or blading, however you want to say it, his right hip away from me." Holland testified he never told defendant to stop, and he noticed defendant "was short of breath[;] he was sweaty. He was nervous, [and] . . . it struck me as somebody who just got done running."

After a few more moments of following defendant, Holland testified defendant went up to a house and sat down. Holland said "I asked him again

where he was coming from, where he was going. I asked him what his name was, what his date of birth was. I do[] [not] remember the name that he gave me, but I do remember that the year of his date of birth was 1934." Holland said he knew defendant was lying to him because he was not "eighty-something" years old. Holland "was pretty shocked, actually, when [defendant] sat down."

Holland also described the circumstances surrounding the pat-down. He told defendant

> we[] [are] going to pat you down for officers' safety. We[] [are] going to have you stand up. I need you to lift your arms up. And when he lifted his arms up and I could finally see his right front pocket, I could see a bulge consistent with a concealed firearm in it.

Holland testified he recovered a black handgun concealed in defendant's pocket.

On cross-examination, Holland reiterated he had the description given over the radio and also the information from an officer of an individual walking on a nearby street matching the description. Holland conceded he never heard a gunshot himself.

On the third day of the hearing, Galloza testified, and the State played his bodycam recording. He did not recall hearing a gunshot that evening but responded to the area after hearing Sanchez's report. Galloza denied ever seeing defendant running, carrying, or firing a gun.

When asked about the pat-down, Galloza explained:

> I think the lapse was because . . . Camden County Police, any time we stop somebody—of course during, like, these circumstances, they[] [are] going to get detained, a pat[-]down[] [is] going to be conducted immediately. But because we did[] [not] . . . stop him and the sheriff's department stopped him, I think that[] [was] where the disconnect was, that[] [was] why the pat[-]down was conducted immediately because the sheriff's department did[] [not] do that.
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> But when I arrived on scene, . . . any time we have certain circumstances where they meet those requirements, the time of the day, the area, the matching description of a suspect that just possibly fired a weapon, we would conduct a pat[-]down almost all the time based on those circumstances, as long as those circumstances arise.
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> At that point, the circumstances were there. He was matching the description of somebody who was leaving with a firearm at the time of day, the area, so on and so forth, that[] [was] why the pat[-]down was conducted and I instructed the officers to conduct [it].

Galloza further stated there were not many other people in the area and defendant was the only person seen who matched the description.

In an oral decision issued September 15, 2020 and accompanying order, the court denied defendant's motion. The judge addressed the custodian's "black like me" testimony, acknowledging defendant was darker skinned than the

custodian. He also found the officer's description of defendant as moving down the street in an evasive manner "very relevant." The judge stated:

> I'm not making a finding that he was running from the police officer, but he clearly certainly would be a person who the officer had a duty to check out and that he would be, in the [c]ourt's opinion, permitted to ask him questions without it being considered a stop[].

The judge looked at the totality of the circumstances to determine whether officers had reasonable suspicion to conduct the investigatory stop, engaging in a two-step analysis. In considering the first step, determining the objective observations of the officers, the court found the officers' testimony was credible, and they "were honest in what they did know and what they did not know." The court also found the State had established the second step, in demonstrating the evidence raised the suspicion that defendant was engaged in wrongdoing. The judge found the ShotSpotter alert corroborated Sanchez's report of hearing a gunshot and the officers were following their duty to investigate. The officers spoke to the occupant of the truck and the custodian. The judge stated that defendant matched the custodian's description of the person seen walking in the area. The only person officers encountered on the street was defendant. The court noted when the officer saw defendant, he was "sweaty, nervous, and subsequently when stopped, behaved unusually by lifting his shirt." Defendant

also gave officers a fake name and birth date. Therefore, the court found law enforcement had reasonable suspicion to perform a lawful investigatory stop after Holland's field inquiry.

In addressing the search, the court noted, "The officers were able to see th[e distinctive] outline of a pistol in . . . defendant's right pocket. This was the same side of the body that . . . defendant was trying to shield from . . . Holland as he went down the street." Under the totality of the circumstances, the court found the search for a weapon was lawful and the officers had reasonable suspicion to conduct the search.

Defendant subsequently pleaded guilty to the certain persons charge and was sentenced to a five-year prison term with five years of parole ineligibility.

III.

Defendant raises the following issues on appeal:

> POINT I
> THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S MOTION TO SUPPRESS BECAUSE THE OFFICERS LACKED REASONABLE SUSPICION TO STOP [DEFENDANT]
>
> A. Legal Standard
>
> B. [Defendant] Was Subjected to a Seizure

C. The Officers Lacked Reasonable Suspicion to Stop [Defendant]

1. The Officers Had No Reason to Suspect That Any Criminal Activity Had Occurred

2. The Officers Could Not Reasonably Rely on the Description Provided by the Unidentified Janitor

3. The Officers Had No Reason to Suspect that [Defendant] Had Been Engaged in Criminal Activity

POINT II
THE TRIAL COURT ERRED IN DENYING [DEFENDANT]'S MOTION TO SUPPRESS BECAUSE THE OFFICERS LACKED REASONABLE SUSPICION TO SEARCH [DEFENDANT]

A. The Officers Did Not Fear For Their Safety

B. The Officers Relied on Police Procedures, Rather than Reasonable Particularized Suspicion, to Conduct the Pat-Down

Our scope of review of a motion to suppress is limited, and we "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) (quoting State v. Elders, 192 N.J. 224, 243 (2007)) (citing State v. Robinson, 200 N.J. 1, 15 (2009)). We "give[] deference 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 Elders, 192 N.J. at 244). Therefore, "[t]he suppression motion judge's findings should be overturned 'only if they are so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Boone, 232 N.J. 417, 426 (2017) (quoting Elders, 192 N.J. at 244).

The legal conclusions and "the consequences that flow from established facts" receive no deference and are thus reviewed de novo. Ahmad, 246 N.J. at 609 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Defendant contends the court erred in denying the suppression motion because the facts did not give the officers reasonable suspicion he was involved in criminal activity. We disagree.

The Fourth Amendment to the United States Constitution and Art. I § 7 of the New Jersey Constitution protect the right of individuals from unreasonable searches and seizures. U.S. Const. amend. IV; N.J. Const. art. I, § 7.

"[There] is nothing in the Constitution which prevents a police[] [officer] from addressing questions to anyone on the streets," and "[p]olice officers enjoy 'the liberty . . . [(]possessed by every citizen) to address questions to other persons.'" United States v. Mendenhall, 446 U.S. 544, 553 (1980) (first quoting Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring); then quoting Terry, 392 U.S. at 32-33 (Harlan, J. concurring)). It is "[o]nly when the officer, by

means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Id. at 552 (quoting Terry, 392 U.S. at 19, n.16). If a person to whom an officer is asking questions is "free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification." Id. at 554-55 (finding federal agents approaching the defendant in an airport concourse, identifying themselves, and requesting, but not demanding, to see identification and a ticket, without more, did not amount to a seizure).

The reasonable suspicion required to make a stop under the Fourth Amendment "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, [but] the Fourth Amendment requires at least a minimal level of objective justification for making the stop." Illinois v. Wardlow, 528 U.S. 119, 123 (2000). Additionally, "[t]he officer must be able to articulate more than an 'inchoate and unparticularized "hunch"' of criminal activity." Id. at 123-24 (quoting Terry, 392 U.S. at 27).

In determining if an investigatory stop has occurred, "a court must consider whether 'in view of all of the circumstances surrounding the incident,

a reasonable person would have believed that he [or she] was not free to leave.'" State v. Stovall, 170 N.J. 346, 355 (2002) (alteration in original) (quoting Mendenhall, 446 U.S. at 554). A brief detention can be sufficient to constitute a seizure. Id. at 356. But police officers do not violate the Constitution by simply approaching individuals and asking if they are willing to answer a few questions. Ibid. These simple field inquiries are constitutional so long as officers do not deny individuals their ability to move and are not based on impermissible factors, such as race. Ibid.; State v. Rodriguez, 172 N.J. 117, 126 (2002).

An officer's demeanor is relevant to the analysis of whether a field inquiry transforms into a seizure; for example, conversational and not-overbearing questions that lack demands or orders may not suggest the individual is seized. Rodriguez, 172 N.J. at 126. Once an objectively reasonable person feels their freedom of movement is restricted, the encounter escalates from a field inquiry to an investigative stop. Ibid. It is not based on the officer's intent. Ibid.

As under the Fourth Amendment, the New Jersey Constitution calls for "something less than the probable cause standard needed to support an arrest." State v. Thomas, 110 N.J. 673, 678 (1988); State v. Citarella, 154 N.J. 272, 279 (1998). The officer must "'point to specific and articulable facts which, taken

together with rational inferences from those facts, reasonably warrant' the intrusion." Thomas, 110 N.J. at 678. This is an objective standard. Ibid.; Citarella, 154 N.J. at 279.

"[R]easonable suspicion is neither easily defined nor 'readily, or even usefully, reduced to a neat set of legal rules.'" Stovall, 170 N.J. at 356 (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). But it does need more than an "inchoate and unparticularized suspicion or hunch." Id. at 357 (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). Courts must look to the totality of the circumstances to determine whether reasonable suspicion exists. Id. at 361. To that end, courts can give weight to an "'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.'" Citarella, 154 N.J. at 279 (quoting State v. Arthur, 149 N.J. 1, 10-11 (1997)); see State v. Pineiro, 181 N.J. 13, 25 (2004) (finding officer who had experience with controlled dangerous substances (CDS) trafficking and knew cigarette boxes are sometimes used to conceal CDS and witnessed individuals passing a cigarette box while not smoking and departing upon seeing the officer's presence was sufficient under the totality of the circumstances to warrant a reasonable and articulable suspicion). Additionally, "[t]he 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.'" Citarella, 154 N.J. at 279-80 (quoting Arthur, 149 N.J. at 11). However, "seemingly furtive movements by the suspect, without more, are insufficient to constitute reasonable and articulable suspicion." State v. Goldsmith, 251 N.J. 384, 400 (2022).

Here, the trial court found the officers credible. We will not second-guess that finding. Sanchez testified he heard a gunshot. He then received a Shot Spotter alert of gunfire. The officer spoke to a man in the area who mentioned the custodian at Project H.O.P.E. might have some information. The custodian gave police a description of a man he saw in the area, a black male wearing a white T-shirt. Police immediately saw an individual walking nearby matching that description.

If these events were considered individually, they likely would not give rise to reasonable suspicion, but together, viewed under the totality of the circumstances, Holland and the officers had a reasonable and articulable suspicion that defendant was involved in criminal activity.

Holland's initial inquiry to defendant was just that—a permitted inquiry. Defendant was free to move away when Holland first approached him and began

asking him where he was going and where he was coming from. See Stovall, 170 N.J. at 356. Holland's questions were not overbearing or presupposing criminality. Nor did Holland seek to block defendant's path or restrict his ability to move. The questioning of defendant before defendant stopped and sat on the stoop were part of a constitutional field inquiry. See ibid. Once defendant sat down and officers surrounded him, the encounter escalated to an investigative stop. See Rodriguez, 172 N.J. at 126.

However, the stop of defendant at that point was reasonable under the totality of the circumstances, given the time of night and lack of foot traffic, Sanchez hearing a gunshot and the corresponding ShotSpotter alert, the suggestion to speak to the custodian, the custodian corroborating having heard gunshot and his description of a person seen in the area, and police then seeing defendant, who matched the description, walking nearby. In addition, while Holland was walking with defendant, defendant did not answer questions, became evasive and tried to hide the side of his body concealing the firearm. With all of this information, police "ha[d] a reasonable and particularized suspicion to believe [defendant] had just engaged in, or was about to engage in, criminal activity." See Stovall, 170 N.J. at 356.

In Point II, defendant asserts the court erred in concluding the officers had reasonable suspicion to search him. Again, we disagree.

A search pursuant to an investigatory stop must be "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20. The search is justified when an officer reasonably concludes

> the persons with whom [they] [are] dealing may be armed and presently dangerous, where in the course of investigating this behavior [the officer] identified [themself] as a police [officer] and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel [their] reasonable fear for [their] own or others' safety.
>
> [Id. at 30.]

This is a "narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer." Id. at 27. When justified, the officer is entitled to a "carefully limited search . . . in an attempt to discover weapons which might be used to assault [the officer]." Id. at 30. "[O]fficer[s] 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 [their] safety or that of others was in danger." Thomas, 110 N.J. at 679 (quoting Terry, 392 U.S. at 27).

We are satisfied the court did not err in finding the officers' pat-down of defendant was reasonable. The police stopped defendant on suspicion that he was involved in gun-related illegal activity. This was an objectively credible reason to believe he was armed. See id. at 680. We see no merit in defendant's argument that several minutes passed before the pat down occurred. When Galloza reached the scene, he told the officers to pat defendant down. As stated, since Galloza had reasonable suspicion defendant was involved in the gun activity, he had a reasonable basis to search defendant for weapons for the officers' safety. See ibid. Moreover, after defendant stood up, the officers observed the bulge in his pocket prior to the frisk.

We discern no error that leads us to conclude that the trial judge was so clearly mistaken that the interests of justice demand intervention. See Boone, 232 N.J. at 426.

We remand to the trial court solely for the correction of the Judgment of Conviction to reflect defendant was convicted of second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1).

Affirmed. Remanded for correction of the Judgment of Conviction. We do not retain jurisdiction.