

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1845-20**

WENTON PHILLIPS,

Plaintiff-Appellant,

v.

PLAINFIELD DETECTIVE M.
BLACK, PLAINFIELD POLICE
OFFICER KING, POLICE
OFFICER DONOVAN,
PLAINFIELD POLICE
DEPARTMENT, and CITY OF
PLAINFIELD,

Defendants,

and,

TERRY SHAW and
MARTA BECZEK,

Defendant-Respondents.

Submitted December 6, 2022 – Decided February 17, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1487-18.

Forman, Cardonsky, & Tsinman, LLC, for appellant Wenton Phillips (Samuel Tsinman, on the brief).

Matthew J. Platkin, Attorney General, for respondents Terry Shaw and Marta Beczek (Melissa H. Raksa, Assistant Attorney General, of counsel; Brett J. Haroldson, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Wenton Phillips appeals a trial court order of summary judgement in favor of defendants. We affirm.

Detective Black of the Plainfield Police Department, Marta Beczek, a civilian investigator with the Alcohol Beverage Control Bureau (ABC), and Terry Shaw, who works for the Division of Criminal Justice, were conducting joint targeted undercover surveillance regarding sales to underage persons outside a liquor store due to previous infractions of service to underaged minors at that store. Phillips, who was twenty-nine years old at the time of the incident, went into the store, and unbeknownst to defendants, purchased lottery tickets but no alcohol in the liquor store.

Defendants observed Phillips, wearing a black hooded sweater and a baseball cap, as he entered the store, exited, and returned to his vehicle. Defendants could not discern Phillips' age because he wore his hood up, partially

obscuring his face. Detective Black, suspecting Phillips was underage and had purchased alcohol, approached Phillips as he returned to and entered his vehicle, and asked him for identification, which Phillips refused to provide. Phillips stated he was twenty-nine years old but refused to produce identification. Phillips then attempted to drive away. Detective Black ordered Shaw to block Phillips from exiting the parking lot with one of the undercover vehicles.

Detective Black called for police backup. When four backup officers arrived, plaintiff handed over identification but refused to get out of his car despite ordered to do so. The backup officers then surrounded the car as Shaw and Beczek stood next to the undercover vehicle blocking the exit.

Detective Black repeatedly asked Phillips if he had any weapons and ordered him to step out of the car. The interaction continued for approximately five minutes, without Phillips answering the question. Phillips asked Detective Black what suspicion he had for asking him to step out of the car, at which point Detective Black told him he failed to comply with three lawful orders, first by not producing identification, then by attempting to drive away, and not stepping out of the vehicle. Phillips eventually exited the vehicle, and was immediately handcuffed and arrested for obstruction, N.J.S.A. 2C:29-1A, but the charges were later dropped, and he was released an hour after being arrested.

Phillips then filed an action for false arrest, malicious prosecution, abuse of process, and failure to train, all in violation of the New Jersey Civil Rights Act. The trial court granted summary judgment to defendants. Phillips filed this appeal on March 15, 2021. However, on November 19, 2021, he informed us he had amicably resolved his claims against Black, Donovan, Plainfield Police Department and City of Plainfield (the Plainfield defendants). Additionally, plaintiff had stipulated to the dismissal of defendant Teisha King at the trial level. The only remaining defendants before us are Shaw and Beczek (the State defendants). The only remaining cognizable claim against Shaw and Beczek is failure to intervene in violation of the New Jersey Civil Rights Act (NJCRA), N.J.S.A. 10:6-1 to 2.

"In reviewing a grant of summary judgment, 'we apply the same standard governing the trial court -- we view the evidence in the light most favorable to the non-moving party.'" Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 349-50 (2016) (quoting Qian v. Toll Bros. Inc., 224 N.J. 124, 134-35 (2015)). We consider the factual record and reasonable inferences that may be drawn from those facts, "in the light most favorable to the non-moving party" to decide whether the moving party is entitled to judgment as a matter of law. IE Test,

LLC v. Carroll, 226 N.J. 166, 184, (2016) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

We accord no special deference to a trial court's assessment of the documentary record as the decision to grant or withhold summary judgment does not hinge upon a judge's determinations of the credibility of testimony rendered in court but instead amounts to a ruling on a question of law. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Pursuant to Rule 4:46-2(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged, and that the moving party is entitled to a judgment or order as a matter of law." In Brill the Supreme Court explained, the "essence" of the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 533 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). Moreover, "[o]n a motion for summary judgment the court must grant all the favorable inferences to the non-movant." Id. at 536.

Although non-movants obtain the benefit of all favorable inferences, bare conclusions without factual support in affidavits or the mere suggestion of some metaphysical doubt as to the material facts will not overcome motions for summary judgment. R. 4:46-5. A non-moving party "cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Brill, 142 N.J. at 529; see also R. 4:46-5(a) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleading[.]"). Therefore, if the opposing party only points to "disputed issues of fact that are 'of an insubstantial nature . . . ' the proper disposition is summary judgment." Brill, 142 N.J. at 529.

Phillips' claim for failure to intervene cannot withstand summary judgment because he fails to demonstrate the State defendants had a duty to intervene in a police investigative stop and because he created probable cause for his arrest by failing to comply with police orders during a lawful stop.

Phillips' sole remaining argument on appeal alleges the trial judge improperly decided questions of fact regarding Shaw and Beczek's failure to intervene. Plaintiff claims "reasonable minds could differ as to whether probable cause existed at that time . . . and thus, whether the aforementioned named defendants should have intervened" He argues "a police officer has to take reasonable steps to protect a victim from another officer's violation of a

citizen's Constitutional rights," and because Beczek and Shaw were civilian employees in the vicinity of the arrest, that affirmative duty extended to them. Phillips argues the lawfulness of the arrest is a question of disputed material fact for the jury to decide and material to whether the State defendants should have intervened in violation of the NJCRA.¹

The sole case cited in support of this novel proposition, Smith v. Mensinger, 293 F.3d 641 (3d Cir. 2002) is non-binding and readily distinguishable. There, the Third Circuit held the plaintiff could withstand summary judgment on his U.S.C. §1983 excessive force claims where he pleaded prison guards in the area had a duty to intervene when they observed other guards participating in an unjustified beating, particularly where there were disputed material facts. Id. at 649-50. Phillips fails to establish the State defendants, two civil employees, had a duty to intervene in a police officer's investigative stop. Plaintiff has demonstrated no use of excessive force as in

¹ The NJCRA, modeled after the Federal Civil Rights Act, 42 U.S.C. § 1983, affords "a remedy for the violation of substantive rights found in our State Constitution and laws." Brown v. State, 442 N.J. Super. 406, 425 (App. Div. 2015) (quoting Tumpson v. Farina, 218 N.J. 450, 474 (2014)), rev'd on other grounds, 230 N.J. 84 (2017). The NJCRA has been interpreted by our Supreme Court to be analogous to Section 1983; thus, New Jersey courts "look[] to federal jurisprudence construing [Section 1983] to formulate a workable standard for identifying a substantive right under the [NJCRA]." Harz v. Borough of Spring Lake, 234 N.J. 317, 330 (2018).

Mensinger and urges us to conclude the State defendants have a duty to intervene in every police investigative stop if they independently deem the stop to be unconstitutional. This we decline to do.

Even if plaintiffs could suggest some duty on the part of the State defendants to intervene, the investigative stop, part of a targeted surveillance operation, and conducted by Detective Black, was lawful as it was informed by the fact neither he nor the State defendants could discern Phillips' age. See State v. Goldsmith, 251 N.J. 384, 401 (2022) (Determining whether reasonable and articulable suspicion exists for an investigatory stop is a highly fact-intensive inquiry).

A police officer is permitted to briefly detain an individual and restrict their movement when the officer has an objectively reasonable basis to believe criminal activity is afoot and a reasonable person under the circumstances would not feel free to terminate the encounter and leave. Id. at 30; Goldsmith, 251 N.J. at 399; State v. Rosario, 229 N.J. 263, 272 (2017). A warrant is not needed as long as the basis for the stop "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." State v. Rodriguez, 172 N.J. 117, 126-27 (2002) (quoting Terry, 392 U.S. at 21). Phillips' refusal to provide identification provided the reasonable suspicion necessary.

The stop escalated after Phillips continued to refuse to produce his identification and attempted to drive away. See State v. Pineiro, 181 N.J. 13, 25 (2004) ("The fact that purely innocent connotations can be ascribed to a person's actions does not mean that an officer cannot base a finding of reasonable suspicion on those actions as long as 'a reasonable person would find the actions are consistent with guilt.'") (quoting State v. Citarella, 154 N.J. 272, 279-80 (1998)); State v. Ramos, 282 N.J. Super. 19, 22 (App. Div. 1995) ("it may be argued persuasively that . . . flight converted articulable suspicion into probable cause.").

Until backup arrived, Detective Black still did not have proof Phillips was not underaged. When backup arrived, Phillips finally turned over his driver's license. Detective Black began questioning Phillips as to whether he had weapons in the vehicle and ordering him to step out of the vehicle. Phillips did not answer the repeated questions and refused to step out of the vehicle. In Smith, 134 N.J. 599, 617 (1994), our Supreme Court concluded Pennsylvania v. Mimms, which held once a vehicle is lawfully stopped, a police officer may request the driver exit the vehicle, 434 U.S. 106, 111 (1977), does not violate Article I, Paragraph 7 of the New Jersey Constitution. Smith, 134 N.J. at 611; State v. Bernokeits, 423 N.J. Super. 365, 370-71 (App. Div. 2011). Thus,

Phillips' contention Black needed an independent basis to order him to exit the vehicle lacks merit.

Detective Black's investigatory stop was lawful given plaintiff's failure to produce identification and respond to his questions. See State v. Zapata, 297 N.J. Super. 160, 171 (App. Div. 1997) (holding right to be free from investigatory vehicle detention does not extend where suspicion motorist is unlicensed, automobile is not registered, or vehicle occupant has violated law).

Detective Black had reasonable suspicion when Phillips failed to hand over his driver's license and attempted to flee. Pineiro, 181 N.J. at 25; see also State v. Crawley, 187 N.J. 440, 453 (2006) (holding N.J.S.A. 2C:29-2(a)(2) codified common law making it illegal to resist arrest by flight or other means, even if the arrest is later deemed an unconstitutional search or seizure.)

Even construing all facts most favorably to plaintiff, the investigatory stop was lawful; the fact that the obstruction charge was later dismissed does not render the stop unlawful. There are no disputed facts material to a state civil rights violation, no allegations of excessive force, and no legal support for the theory that civilian state employees have an independent duty to assess whether an investigatory stop is constitutional and intervene in a police action to prevent an arrest. Brill, 142 N.J. at 529.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION