SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2119-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NOAH A. HILL, a/k/a
NOAH ANDERSON,

Defendant-Appellant.

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Submitted March 22, 2023 – Decided July 19, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 20-02-0157.

Joseph E. Krakora, Public Defender, attorney for appellant (Morgan A. Birck, Assistant Deputy Public Defender, of counsel and on the brief).

Esther Suarez, Hudson County Prosecutor, attorney for respondent (Patrick R. McAvaddy, Assistant Prosecutor, on the brief).

PER CURIAM

Following the denial of his motion to suppress evidence seized in a warrantless search, defendant Noah A. Hill pleaded guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1), and was sentenced to two years' probation conditioned on his serving 364 days in the county jail concurrent to an identical sentence on an unrelated indictment. Defendant appeals from the denial of his motion to suppress the handgun seized in a Terry[1] stop based on a supposed tip from a confidential informant. We reverse.

The only witness to testify at the suppression hearing was a Jersey City police officer of two-and-a-half-years' experience assigned to the street crimes unit. According to the officer, he and his partner were dispatched at 10:45 p.m. on a Monday night in September 2019 to Wegman Parkway near Bergen Avenue, where they were told there was a Black man with a gun on the north side of the street "wearing a gray sweatshirt with the word 'GAP' in blue written across the chest" and either a black face mask or a ski mask rolled up on top of his head.

[1] Terry v. Ohio, 392 U.S. 1 (1968).

The officers got that information from Detective Seals, who got it from Detective Sheehan, who "works for the prosecutor's office, but was assigned to the Jersey City Police Department Cease Fire Unit," who apparently got it from a confidential informant. Neither the testifying officer nor his partner spoke to Detective Sheehan, and they knew nothing about the confidential informant. The officer had no more information about the informant at the suppression hearing.

The officer and his partner were in an unmarked van serving as the lead car in a several car "convoy" of six or seven other officers driving down Wegman Parkway, a one-way street. As they neared Bergen Avenue, they spotted defendant, a Black man wearing a gray GAP sweatshirt with a ski mask rolled up on his head, leaning against a car on the north side of the street. According to the officer, although there were other people on the street near defendant, he "stood out" because "when you see exactly what you're being relayed, that goes right off right in your head, like, okay, that, you know, that's it."

The officer testified defendant wasn't doing anything illegal when they spotted him, and the officer didn't see a gun or even any bulge under his shirt as they approached. But defendant did turn away from them toward the car

"kind of maybe trying to — dropped his hands down, maybe attempting to drop something or not be seen. You know." But defendant's hands never even got to his waist, because, as the officer testified, the officers "grabbed" defendant "within a second or two because, you know, once we see him, we want to get on him quick . . . so it doesn't give anyone the opportunity to pull a gun on us or discard one."

The officer estimated only "[m]aybe two, three seconds" passed between "the time [they] initially saw [defendant] to the time [they] stopped him." The officer testified as soon as defendant "turned" and "his hands had dropped down," the officer "was right upon [defendant] within a second," grabbing his hands so his partner could perform a pat down. In his waistband, the officers recovered a semi-automatic handgun.

Although defendant argued the case was virtually indistinguishable from Florida v. J.L., 529 U.S. 266, 268 (2000), in which the Court held "an anonymous tip that a person is carrying a gun is, without more" insufficient to support a "stop and frisk," the trial judge disagreed. Finding the officer "a very credible witness," the trial court distinguished J.L. based on defendant's "additional act, of reaching towards his waistband in an unnatural way" and attempting to avoid being seen by the officers. The judge reasoned that

defendant "reaching towards his waistband, his back turned to the officers, surely [amounted] to unusual movement in light of the surrounding circumstances," which "along with the corroborated physical and geographic description of the defendant, and his location, justified a pat-down search of the defendant."[2]

Defendant argues the officer's testimony makes clear beyond doubt the police lacked reasonable suspicion to justify the stop and frisk of defendant. We agree.

Our standard of review on a motion to suppress is well settled. State v. Gamble, 218 N.J. 412, 424-25 (2014). We defer to the trial court's factual

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[2] Although the trial judge characterized the tip as "corroborated" by the "physical and geographic description of the defendant, and his location," J.L. makes clear "[a]n accurate description of a subject's readily observable location and appearance" does not demonstrate "the tipster has knowledge of concealed criminal activity." 529 U.S. at 272. The case teaches that "[t]he reasonable suspicion" in anonymous tip cases "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." Ibid. (describing a source as "distinguishing reliability as to identification, which is often important in other criminal law contexts, from reliability as to the likelihood of criminal activity, which is central in anonymous-tip cases" (citing 4 W. LaFave, Search and Seizure § 9.4(h) at 213 (3d ed. 1996))). Thus, the trial court erred in characterizing the third-hand tip in this case as "corroborated" by police finding defendant on the north side of Wegman Parkway near Bergen Avenue wearing a GAP sweatshirt. J.L. establishes this tip was uncorroborated.

findings on the motion "unless they were clearly mistaken or so wide of the mark that the interests of justice require appellate intervention." State v. Elders, 192 N.J. 224, 245 (2007) (internal quotations omitted) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007)). Our review of the trial court's application of the law to the facts, however, is plenary. State v. Hubbard, 222 N.J. 249, 263 (2015).

Stated differently, although "a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers," the trial court's "determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal." Ornelas v. United States, 517 U.S. 690, 699 (1996).

Applying that standard here, we accept the trial court's factual finding that defendant "reaching towards his waistband, his back turned to the officers" constituted "unusual movement in light of the surrounding circumstances." We disagree that "unusual movement" was sufficient to render this stop, based as it was on an anonymous tip about a Black man with a gun, consistent with the Fourth Amendment.

As defense counsel notes in defendant's appellate brief, this stop is strikingly similar to the one the Court deemed unconstitutional in J.L., a case the State does not attempt to distinguish, and indeed fails to mention, in its brief. In J.L., "an anonymous caller reported to the Miami-Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268. As here, "nothing [was] known about the informant." Ibid. Also, as here, the police went to the place, saw a Black man wearing the shirt the caller described and arrested him, although the officers had no reason to suspect him of illegal conduct. Ibid.

The Court deemed the stop violated the Fourth Amendment because "the officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller." Id. at 270. As Justice Ginsburg explained, because "[t]he anonymous call concerning J.L. provided no predictive information," it "left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct." Id. at 271. "All the police had to go on in [J.L.] was the bare report of an unknown,

unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." Ibid.

The police had no more to go on here when they stopped defendant. Defendant turning away from the police as they approached and dropping his hands was only concerning to the officer because the anonymous tipster claimed defendant had a gun. But a man standing on the street, leaning against a car who turns away from the officers and drops his hands does not, standing alone, give rise to reasonable suspicion. As we noted in State v. Stampone, 341 N.J. Super. 247, 252 (App. Div. 2001), if facts like those "either separately or collectively, but without more, were sufficient to support a Terry stop, a significant portion of our urban population would be susceptible to constant police investigation. In our view that is an entirely unacceptable proposition."

Because defendant's "unusual movement" did not give rise to reasonable suspicion sufficient to support the officers grabbing defendant to perform a pat-down, that is a Terry stop, see State v. Rosario, 229 N.J. 263, 272 (2017), it obviously didn't add anything to "the bare report of an unknown, unaccountable informant" that defendant had a gun, J.L., 529 U.S. at 271. Defendant's conduct coupled with the anonymous tip might have been enough

to permit the officers to approach defendant to ask him some questions, but only because a field inquiry of that sort requires no suspicion at all. See Rosario, 229 N.J. at 272.

As our Supreme Court reminded in State v. Shaw, 213 N.J. 398, 409 (2012), "[p]eople, 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." Because the officers lacked that particularized suspicion when they seized defendant based on the "report of an unknown, unaccountable informant," J.L., 529 U.S. at 271, we reverse the denial of his suppression motion and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

Reversed and remanded.