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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0646-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAYSHAWN MINGO,

Defendant-Appellant.

Submitted June 4, 2024 – Decided June 11, 2024

Before Judges Gooden Brown and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 21-01-0111.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Rachel E. Leslie, Assistant Deputy Public Defender, of counsel and on the brief).

Theodore Stephens, II, Essex County Prosecutor, attorney for respondent (Braden Bendon Couch, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After the trial judge denied defendant Dayshawn Mingo's motion to suppress evidence, defendant pled guilty to second-degree unlawful possession of a handgun without a permit, fourth-degree possession of a large capacity ammunition magazine, and fourth-degree resisting arrest. In accordance with the negotiated plea, the judge sentenced defendant to an aggregate forty-two-month prison term subject to a forty-two-month period of parole ineligibility.

On appeal, defendant raises the following contentions:

POINT I

A NEW SUPPRESSION HEARING IS REQUIRED BECAUSE THE TRIAL COURT DENIED [DEFENDANT] A FAIR SUPPRESSION HEARING WHEN IT BARRED THE DEFENSE FROM CALLING I.K. AS A WITNESS.

POINT II

THE EVIDENCE SHOULD HAVE BEEN SUPPRESSED BECAUSE THE POLICE LACKED PROBABLE CAUSE TO STOP THE UBER AND SEARCH [DEFENDANT].

After reviewing the record in light of these arguments and the applicable law, we affirm.

I.

The trial judge conducted a two-day suppression hearing. Sergeant Anthony Ricks testified for the State that he was conducting a surveillance of

narcotics activity from an unmarked car parked on a city street. Ricks was working with a "takedown unit" comprised of two other officers who were parked in a nearby unmarked vehicle. According to the operation's protocol, if Ricks observed criminal activity, he would contact the takedown unit to arrest the suspect.

At around 10:52 p.m., Ricks saw defendant exit a building on the street. Ricks thought he knew defendant and his attention was also drawn to him because defendant was wearing a bright red jacket. Ricks saw defendant talking to "a couple of males standing in the walkway in front of the building." Ricks moved his car to the front of the building to get a closer look. By that time, there were only two men on the sidewalk. The men were only ten to fifteen feet away from where Ricks was parked.

Ricks saw defendant lift up the waistband of his pants and remove a handgun. Ricks testified that the handgun had a large extended ammunition magazine with a polka dot pattern.

Ricks called for the takedown unit to arrest defendant. Before the unit arrived, Ricks saw defendant walk over to a waiting vehicle and talk to the driver.¹ Defendant briefly returned to the conversation on the sidewalk. At that

¹ It was later determined that the driver worked for a ridesharing company.

point, defendant and the other man, later identified as Dwayne Ruben, got into the waiting vehicle, which then drove away.

The takedown unit pulled the car over. Ricks also went to the scene. The officers ordered defendant and Ruben out of the car. The officers found the handgun in defendant's waistband. The handgun had white skulls painted on it. After defendant was handcuffed, he ran away from the officers. They caught him and found a second handgun on his person.

Ricks was the State's only witness. Defendant did not testify, but called Ruben as a witness. Ruben stated that defendant never showed him a gun outside the building. The defense played some surveillance video taken from cameras outside the building, and alleged that the footage did not depict defendant showing Ruben a gun.

After oral argument, the trial judge rendered a thorough oral decision. The judge made detailed credibility findings concerning both Ricks and Ruben. As for Ricks, the judge stated:

I found Sergeant Ricks' testimony to be credible. His demeanor, the manner in which he testified, his means of obtaining knowledge of the facts, his personal observations, the extent to which he was corroborated by the evidence and the reasonableness of his testimony all contribute to my determination that he was credible.

On the other hand, the judge determined that Ruben's testimony was "less credible." The judge observed that Ruben had arrived in court with defendant's family and had a longstanding relationship with defendant. The judge found that Ruben's testimony "struck [him] as being - - as coached, as though he was trying to remember his - - the story and not what actually occurred."

The judge further found that "the video does not have the persuasive effect . . . defendant and defense believe it does. It is difficult to see what, if anything, is occurring on the video."

As a result, the judge concluded that Ricks saw defendant's handgun in plain view from his vantage point no more than fifteen feet away. Thus, the officers had ample reason to stop the car and seize defendant's weapon.

II.

On appeal, defendant argues that the trial judge erred by denying his suppression motion. We disagree.

We review a trial court's factual findings in a suppression hearing with great deference. State v. Gonzales, 227 N.J. 77, 101 (2016). In our review of a "grant or denial of a motion to suppress[,] [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. Gamble, 218 N.J. 412, 424

(2014). We defer "to those findings of the trial [court] which are substantially influenced by [its] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). We owe no deference, however, to the trial court's legal conclusions or interpretation of the legal consequences that flow from established facts. Our review in that regard is de novo. State v. Watts, 223 N.J. 503, 516 (2015).

The police may, without a warrant temporarily detain a person if they have a reasonable and articulable suspicion that the person is engaged in unlawful activity. Elders, 192 N.J. at 247. Similarly, the police may stop a motor vehicle based on a "reasonable and articulable suspicion that an offense, including a minor traffic offense, has been committed." State v. Amelio, 197 N.J. 207, 211 (2009). The State bears the burden of establishing by a preponderance of the evidence that it possessed sufficient information to give rise to a reasonable and articulable suspicion. State v. Mann, 203 N.J. 328, 337-38 (2010).

Applying these well established standards, we discern substantial credible evidence in the record to support the trial judge's findings of fact and we agree with the judge's interpretation of the legal consequences that flow from those facts. We conclude that the State's proofs established by a preponderance of the

evidence that the stop of the car which defendant entered after Ricks saw him display a handgun and the subsequent seizure of the weapon were fully justified.

Under the plain view exception to the warrant requirement, the State must prove by a preponderance of the evidence not only that the officer was lawfully present when he observed the incriminating item but also that it was "immediately apparent that the seized item is evidence of a crime." Gonzales, 227 N.J. at 101. Because Ricks credibly testified that he saw defendant show the handgun outside the building from his nearby parking spot, the State plainly met both of these requirements.

Thus, Ricks and the other officers had all the "reasonable and articulable suspicion" needed to stop defendant's car and seize the handgun. Therefore, we reject defendant's contention on this point.

III.

Defendant also argues that the trial judge erred by denying his request to call a witness who was identified only as "I.K." This argument also lacks merit.

After the judge granted defendant's request for an evidentiary hearing on his suppression motion, defense counsel stated he planned to call I.K. as a witness. The judge asked counsel to address the relevancy of I.K.'s testimony because I.K. was not outside the building with defendant and the other men

while Ricks was observing them. Defendant's attorney asserted that I.K. was "a confidential informant" who supplied information to Ricks indicating that defendant was carrying a handgun. The attorney claimed that this information, rather than Ricks' observation of the handgun, provided "the real basis" for the police to stop the car.

However, the State stated that no confidential informant had been involved in the surveillance operation, and Ricks confirmed this at the suppression hearing. Later, after the judge ruled that I.K.'s testimony was not relevant and defendant was seeking reconsideration of this ruling, it became clear that defense counsel had never even contacted I.K. to discuss any proposed testimony and that counsel was only "hypothetically" suggesting I.K. was an unnamed confidential informant. In other words, defense counsel hoped to use the suppression hearing as a discovery mechanism in order to "explore the possibility that this individual did provide information to Officer Ricks or other members of the . . . [p]olice [d]epartment that were present on the night that [defendant] was arrested and which - - would possibly serve as the true basis for the stop that [would] undermine the credibility of Officer Ricks."

"A trial [judge's] evidentiary rulings are entitled to deference absent a showing of abuse of discretion." State v. Nantambu, 221 N.J. 390, 402 (2015)

(quoting State v. Harris, 209 N.J. 431, 439 (2012)). We discern no principled basis in this record for disturbing the trial judge's determination that any testimony I.K. could have provided would not have been relevant to the question of whether Ricks observed defendant display a handgun outside the building.


Contrary to defendant's contention, a "motion to suppress is available to [a] defendant in order to resolve questions concerning the validity of the search and/or seizure; it is not just another discovery device." State v. Hewins, 166 N.J. Super. 210, 214 (Law Div. 1979). Therefore, a suppression hearing is not a substitute for pre-trial investigations or for the discovery process. See State v. R.W., 104 N.J. 14, 28 (1986) ("allowing a defendant to forage for evidence without a reasonable basis is not an ingredient of either due process or fundamental fairness in the administration of the criminal laws").

There is absolutely nothing in this record to support defendant's contention that I.K. was a secret informant who provided information to the police prior to their seizure of the handgun. Defendant's attorney had never even contacted I.K. before stating he wished to call him as a witness. It is also undisputed that I.K. was not outside the building with defendant. Because defendant was completely unable to make a proffer of what relevant information

I.K. could provide at the hearing, the judge properly ruled that he could not testify.

Affirmed.

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



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