

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2392-21

STATE OF NEW JERSEY IN  
THE INTEREST OF W.C.,  
a juvenile.

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Argued November 9, 2022 – Decided December 5, 2022

Before Judges Messano and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FJ-09-0365-22.

Noah Kim, Assistant Prosecutor, argued the cause for appellant State of New Jersey (Esther Suarez, Hudson County Prosecutor, attorney; Noah Kim, on the brief).

John P. Flynn, Assistant Deputy Public Defender, argued the cause for respondent W.C. (Joseph E. Krakora, Public Defender, attorney; John P. Flynn, of counsel and on the brief).

PER CURIAM

By leave granted, the State appeals from a March 3, 2022 Family Part order suppressing a handgun seized during a warrantless search of W.C., a

juvenile, outside a housing complex in Jersey City. Having considered the record in light of our deferential standard of review, we affirm.

I.

We summarize the facts adduced at the N.J.R.E. 104 hearing conducted on March 3, 2022. The State presented the testimony of Jersey City Police Officer Jesse O'Brien, a six-and-one-half-year veteran of the department, and played the videorecording of the incident from his body worn camera (BWC). Defendant did not testify or present any evidence on his behalf.

Around 7:00 p.m. on December 24, 2021, while driving a marked police car with Officer Joseph Ross as his passenger, O'Brien noticed "a group of five to six individuals congregating in the area where there was a shooting the prior evening." O'Brien testified that while the officers remained in the patrol car, he observed W.C.

    pacing back and forth in a suspicious manner, going between cars as if he was attempting to discard something, monitoring [O'Brien's] position as well as [his] partner's position as [they] sat stationary in the car, and then [W.C.] met up with another individual, was attempting to leave the area, at which point [W.C.] was walking in [the officers'] direction . . . .

At that point, O'Brien noticed W.C.'s jacket "was weighted down on the right side." While narrating the BWC footage O'Brien testified that the officers

then exited the patrol car and followed W.C. because he "acted in a suspicious manner" and his jacket was "weighted down, . . . which was indicative of somebody who was possibly in the possession of a firearm." The officers detained W.C., and three other people on Wayne Street until backup arrived. According to O'Brien, "a pat-down [was] conducted for weapons." Ross recovered a .38 special revolver from W.C.'s right jacket pocket, while O'Brien searched another individual, with negative results.<sup>1</sup>

On cross-examination, O'Brien acknowledged none of the individuals engaged in criminal activity in his presence. Nor did O'Brien advise dispatch about his "suspicions" that anyone in the group had a handgun. O'Brien testified he told the backup officers "to use caution" because the group was detained at the same location where the shooting had occurred the previous night.

Defense counsel also played segments of the post-arrest BWC footage, wherein O'Brien told people at the scene, and an officer at the juvenile detention center, he stopped the group because a shooting had occurred in the same area

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<sup>1</sup> W.C. was arrested and charged with conduct, if committed by an adult, would constitute second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1); fourth-degree possession of a firearm by a minor, N.J.S.A. 2C:58-6.1; and fourth-degree receiving stolen property, N.J.S.A. 2C:20-7(a).

the prior night. O'Brien claimed, however, that the stop was predicated upon "the totality of the circumstances – there was more than just prior activity, . . . [including W.C.'s] suspicious behavior, his path of travel, as well as the jacket being weighted down."

Immediately following summations, the motion judge issued an oral decision. The judge made several factual findings based on O'Brien's testimony vis-à-vis the BWC footage. Because O'Brien's testimony was "inconsistent with" his statements during the incident, as evidenced by the BWC footage, the judge concluded the officer's testimony was not "reasonable or credible." The judge elaborated:

One, [O'Brien] doesn't even give a description of what the suspicious behavior was. He said that [W.C.] was with a group and he kind of stepped off from the group and that he was pacing between a car and that he was walking back and forth and that he was looking in the direction of a police officer. It is unreasonable to believe that a person who is looking at a police officer would then choose to walk directly into the direction of the police officer rather than away from the police officer. . . .

[Further, W.C.] was not running away, not attempting to hide something, not discarding something in a garbage can, not tossing it in the grass that he passed, he walked through the pathway, but simply goes and sits on the porch and is chilling with his friends on the porch.

It is unreasonable to believe that a person who knew that police officers were there, that was acting suspiciously because they saw a police officer and was attempting to discard anything would actually just walk calmly through the alleyway and then go sit right on the porch two doors away from where the alleyway was.

The officer is an experienced officer who would not have put himself in jeopardy, especially after having said to the other officers, "Be careful, there was a shooting here last night." If he reasonably believed that a person was in possession of a firearm, . . . a reasonable officer or a reasonable person would believe that that officer would go directly to the person that they believe has a weapon, not allow him to sit down on the porch with other individuals exchanging banter, and then focus his attention on another person who is not the person . . . who[] he believes had a weapon.

Apparently referencing the BWC footage, the judge also noted police confronted the group, without drawing their service weapons. Further, O'Brien sounded "very surprised" when Ross found the handgun in W.C.'s jacket, casting doubt on O'Brien's testimony that he suspected W.C. had a weapon before he was stopped. Recognizing police need not explain the basis of their "probable cause" to members of the community, the judge found O'Brien patrolled the area to make sure no one had a firearm, but that "hunch [wa]s simply not enough to just go around searching people." The judge concluded the stop did not pass constitutional muster.

## II.

The State primarily asserts the motion judge abused her discretion by discrediting O'Brien's testimony based – not on the officer's demeanor on the witness stand – but by questioning his tactical decisions in conducting the stop and his comments after W.C.'s arrest. The State maintains O'Brien had reasonable, articulable suspicion to stop W.C. and police were permitted to conduct the pat-down for weapons based on the totality of the circumstances. Countering the judge's decision is supported by the record evidence, W.C. urges us to affirm the judge's decision.

While his appeal was pending, the Supreme Court decided State v. Goldsmith, 251 N.J. 384 (2022). W.C. thereafter filed a letter pursuant to Rule 2:6-11(d), contending the case supported his contention that reasonable and articulable suspicion for a stop cannot be based on the area's reputation for high crime. Urging us to affirm, W.C. argues the motion judge correctly determined police lacked reasonable and articulable suspicion to stop him based on the previous shooting in the same area.

Our review of a trial court's decision on a suppression motion is circumscribed. We defer to the court's factual and credibility findings provided they are supported by sufficient credible evidence in the record. State v. Dunbar,

229 N.J. 521, 538 (2017). Deference is afforded "because the 'findings of the trial judge . . . are substantially influenced by his [or her] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J. 154, 166 (2015) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Our deference includes the trial court's findings based on videorecorded or documentary evidence. See State v. S.S., 229 N.J. 360, 374-81 (2017) (reaffirming the deferential and limited scope of appellate review of factual findings based on video evidence); see also State v. Tillery, 238 N.J. 293, 314 (2019); State v. McNeil-Thomas, 238 N.J. 256, 271-72 (2019); State v. Elders, 192 N.J. 224, 244-45 (2007).

We disregard a trial court's findings only if they "are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). "A disagreement with how the motion judge weighed the evidence in a close case is not a sufficient basis for an appellate court to substitute its own factual findings to decide the matter." Elders, 192 N.J. at 245. Legal conclusions are reviewed de novo. Dunbar, 229 N.J. at 538.

Well-established principles guide our review. "Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004). To overcome

this presumption, the State must show by a preponderance of evidence that the search falls within one of the well-recognized exceptions to the warrant requirement. State v. Bryant, 227 N.J. 60, 69-70 (2016). One such exception is an investigatory stop or detention, often referenced as a Terry<sup>2</sup> stop. See Goldsmith, 251 N.J. at 399.

A Terry stop implicates a constitutional requirement that police have "specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity." Elders, 192 N.J. at 247 (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). As our Supreme Court recently reiterated: "Determining whether reasonable and articulable suspicion exists for an investigatory stop is a highly fact-intensive inquiry that demands evaluation of 'the totality of circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions.'" State v. Nyema, 249 N.J. 509, 528 (2022) (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)). Nonetheless, the Court also has recently restated: "[a]n investigative detention 'may not be based on arbitrary police practices, the officer's subjective good

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<sup>2</sup> Terry v. Ohio, 392 U.S. 1, 21 (1968).



faith, or a mere hunch.'" Goldsmith, 251 N.J. at 406 (quoting State v. Coles, 218 N.J. 322, 343 (2014)).

We are satisfied that the motion judge's findings of fact are supported by sufficient credible evidence and her suppression of the evidence seized from W.C. was sound. The judge's decision rested on her first-hand assessment of the lack of quality of the State's proofs that were presented at the testimonial hearing. The judge's assessment of the credibility of the State's witness was peculiarly within the orbit of her authority, and her explanation for rejecting O'Brien's account of events followed established principles of law. As one notable example, the judge found O'Brien's testimony was contradicted by his statements and actions depicted on the BWC footage.

Because the motion judge found O'Brien impermissibly stopped W.C. based on a "hunch," the State had no credible evidence supporting the stop. Accordingly, there existed no lawful basis to validate either the encounter with W.C. or the ensuing seizure of the handgun. Based on our deferential standard of review, particularly where the judge made factual findings from a videorecording, see, e.g., S.S., 229 N.J. at 374-81, we discern no basis to disturb the judge's decision.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JMA', written over the printed text.

CLERK OF THE APPELLATE DIVISION