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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-001262-24

STATE OF NEW JERSEY  
Plaintiff-Plaintiff,

v.

KING H. JOHNSON,  
Defendant-Respondent.

: CRIMINAL ACTION  
:  
:  
: On Leave Granted to Appeal an  
: Interlocutory Order Entered by the  
: Superior Court of New Jersey  
: Law Division-Salem County  
:  
:  
:  
: Sat Below:  
:  
: Honorable Russell A. DePersia, J.S.C.

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BRIEF ON BEHALF OF RESPONDENT-STATE OF NEW JERSEY

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Of Counsel and  
On the Brief  
Dated: FEBRUARY 10, 2025

**NOT CONFINED**

Your Honors:  
Kindly accept this letter brief in lieu of a more formal brief pursuant to R. 2:6-2(b).

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### **STATEMENT OF PROCEDURAL HISTORY**

On February 28, 2024, the Salem County Grand Jury returned indictment 24-02-000054 charging the defendant with one count of Possession of a Weapon During the Commission of a CDS Offense (Second Degree), a violation of N.J.S.A. 2C:39-4.1a; one count of Unlawful Possession of a Weapon (Second Degree), a violation of N.J.S.A. 2C:39-5(b)(1); one count of Unlawful Possession of a Large Capacity Ammunition Magazine (Fourth Degree), a violation of N.J.S.A. 2C:39-3j; one count of Possession of a Controlled Dangerous Substance (Third Degree), a violation of N.J.S.A. 2C:35-10a(1); one count of Possession with the Intent to Distribute a Controlled Dangerous Substance (Third Degree), a violation of N.J.S.A. 2C:35-5b(5); and one count of Possession of a Weapon by a Convicted Person (Second Degree), a violation of N.J.S.A. 2C:39-7b(1). (Pa3-5)

On July 29, 2024, counsel for the defendant filed a Notice of Motion to Suppress Evidence based on a contested stop and search of the defendant. (Pa6-7). A hearing was conducted before the Honorable Russell A. DePersia, J.S.C. on October 18, 2024. After hearing testimony, the Court suppressed the evidence seized in relation to the investigation. (Pa1). The Court ruled that the officer unlawfully detained the defendant when he told the defendant to stop. The Court went on to

indicate that if the stop was justified, the handgun would have fallen under the plain view exception to the warrant requirement.

By Order of January 6, 2025, the State was granted leave to appeal the interlocutory order. (Pa2). This appeal follows.

## **STATEMENT OF FACTS**

On December 15, 2023, Sergeant Christopher Hemple, along with other Penns Grove police officers, were called out to 135 East Main St. for a fight inside a Speed Mart gas station and convenience store. The fight was alleged to involve several black male individuals possibly with weapons.<sup>1</sup> (T6-5 to 20)<sup>2</sup>. Hemple was traveling from ½ mile away and was one of the first arriving officers—another patrol officer was arriving at the same time from another direction. (T7-4 to 9; 45-12 to 16). He observed multiple people exiting the business and it seemed like the fight was beginning to settle down. (T7-11 to 13). Individuals were going in all directions. (T40-2 to 3).

One of the individuals, later identified as the defendant, was observed by Sgt. Hemple walking towards his patrol car as Sgt. Hemple was pulling in the parking lot of the store. The defendant had a mask and was reaching into the satchel that was strapped across his body. (T7-16 to 21).

Hemple was concerned that the defendant was holding a firearm and ordered him to take his hand out of the bag. (T8-5 to 7). Hemple indicated that based on his training and experience and the way the defendant had his hand positioned led him

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<sup>1</sup> Hemple later clarified that there was no mention of a firearm in his report and was unsure if dispatch advised him that firearms were involved. (T37-18 to 19)

<sup>2</sup> T refers to Motion Transcript of October 18, 2024

to believe that it was a firearm. (T42-6 to 11; 43-14 to 19; 53-23 to 25). Hemple took the defendant's actions as threatening. (T54-4 to 5). The defendant took his hand out of the bag but he then attempted to quickly zipper the bag concealing what was inside. (T8-9 to 12). Hemple then ordered the defendant to sit on the curb and not put his hand in the satchel again. (T8-12 to 13). As the defendant sat down, Hemple immediately observed a handgun sticking out of the satchel. (T8-16 to 18). The entire interaction lasted approximately 15 seconds. (T11-25; Pa8)

The defendant indicated that he had been involved in the fight inside of Speed Mart. (T27-16 to 17).

## **LEGAL ARGUMENT**

### **POINT I: The officer had a reasonable articulable suspicion that the defendant had been engaged in criminal activity that warranted the brief investigatory detention of the defendant (T75-3 to 85-11)**

The stopping of an individual is a seizure within the meaning of the Fourth and Fourteenth Amendments and requires reasonable articulable suspicion of criminal activity. Terry v. Ohio, 392 U.S. 1 (1968). Reasonable suspicion is “a particularized and objective basis for suspecting the person stopped of criminal activity.” State v. Stovall, 170 N.J. 346, 356 (2002)(quoting Illinois v. Gates, 462 U.S. 213, 232 (1983). Any brief detention of an individual by law enforcement where the individual reasonably believes there is no freedom to leave, “must be founded on a constitutionally recognized objective justification.” State v. Bynum, 259 N.J. Super. 417, 421 (App. Div. 1992)(citing United States v. Mendenhall, 446 U.S. 544, 551 (1980)). Thus, “a police officer may briefly detain an individual where he can ‘point to specific and articulable facts, which taken together with rational inferences . . . reasonably warrants that intrusion.’” Bynum, 259 N.J. Super. at 421 (quoting Terry, 392 U.S. at 21.) In assessing specific and articulable facts,

[a]n investigatory stop is valid only if the officer has a "particularized suspicion" based upon an objective observation that the person stopped has been or is about to engage in criminal wrongdoing. The ‘articulable reasons’ or ‘particularized suspicion’ of criminal activity must be based upon the law enforcement officer's assessment of the totality of circumstances



with which he is faced. Such observations are those that, in view of officer's experience and knowledge, taken together with rational inferences drawn from those facts, reasonable warrant the limited intrusion upon the individual's freedom.

State v. Davis, 104 N.J. 490, 504 (1986). That court emphasized that a seizure cannot be based solely on an officer's "subjective hunch." Davis, 104 N.J. at 505. The facts supporting the reasonable articulable suspicion cannot occur after the investigative detention has begun. State v. Rosario, 229 N.J. 263, 276-77 (2017).

"An investigatory police stop ... is permissible 'if it 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. Shaw, 213 N.J. 398, 410 (2012) (quoting Pineiro, 181 N.J. at 20). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion required is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." Gamble, 218 N.J. at 428 (citations omitted). "Because the 'determination of reasonable [and articulable] suspicion is fact-sensitive,' a careful review of the totality of the circumstances surrounding each case is required." State v. Mann, 203 N.J. 328, 338 (2010) (alteration in original) (citation omitted).

Here, the court below misapplied the law to the facts of the case and erroneously found that the investigative stop was improper. If a proper analysis of

the facts was conducted, the stop would have been deemed appropriate under the established case law.

Here, Hemple was responding to a call that there was a crime in progress occurring inside the Speed Mart. The caller provided a description of the individuals as “black males”. Hemple arrived at the Speed Mart parking lot within minutes having had to travel only ½ mile to the location. He was one of the first officers to arrive. These facts established that Hemple’s observations occurred close in time to the crime being committed.

When Hemple arrived he observed individuals exiting the building and dispersing in all directions. It was objectively reasonable to assume that the fight was breaking up as the police were arriving on scene and the individual’s who were dispersing were engaged in the criminal activity. Further, the defendant was still on the Speed Mart property when he was told to stop by Hemple.

Hemple observed the defendant walking towards him and the defendant had his hand in an over the shoulder satchel. Hemple testified that it had been

Kind of trend in the last few years is individuals carrying these bags where they’re concealing firearms. They are carrying them in this manner because a lot of them have like quick disconnect type straps where, if they’re being chased or—first off, it allows easy access to a firearm concealed on their persons, and two, it allows them to discard the bag pretty quickly if approached by law enforcement. So its been a common trend lately.

(T58-2 to 10)

When Hemple ordered the defendant to take his hand out of the bag, the defendant immediately attempted to zipper the bag and turned the side of his body with the open pocket away from Hemple to conceal its contents, further heightening Hemple's suspicion that the defendant was involved in the criminal activity that had just occurred inside the store. Hemple's experience with these types of bags was a legitimate factor that should have been, and was not, considered by the court below. See State v. Pineiro, 181 N.J. 13 (2004)(holding that a police officer's knowledge that drugs are often transported in cigarette containers was an appropriate factor to be considered); State v. Citarella, 154 N.J. 272 (1998)(holding that the officer's knowledge that bicycles were often used to transport drugs was a legitimate factor). Here, the court did not even consider this portion of Hemple's testimony in its analysis. The court's failure to consider all of the facts presented at the hearing when conducting its legal analysis.

Additionally, this was not a long detention. The entire episode lasted less than 30 seconds.

The motion court, in its decision, highlights that no fight was occurring when Hemple arrived in the parking lot. (T83-15 to 21). Respectfully, case law does not require that the crime be ongoing at the time of the detention. Requiring this element was a misapplication of the law. All that is required is a reasonable particularized

suspicion that the individual has just engaged in or is about to engage in criminal activity. See State v. Stovall, 170 N.J. 346, 356 (2002) quoting Terry at 21.

The court's characterization of the events as similar to stopping people at Wawa or Target and "order(ing) people around and put(ing) them on the ground and do(ing) searches on them" (T83-17 to 21) is simply not analogous to what transpired in the case before it.

Further, the court discounted the fact that the defendant's hand was in the bag indicating that any person could have their hand in a bag. In doing so, the court failed to consider Hemple's testimony that the position in which the hand was in the bag led him to believe the defendant was holding a gun and his experience on how this type of bag has been increasingly used to conceal guns.

It was reasonable for Hemple to suspect that the defendant, who he encountered just after receiving the call about the fight, who matched the general description of the individuals engaged in the fight, who was one of multiple individuals dispersing from the fight location, who was still on the sidewalk between the parking lot and the Speed Mart, who was holding his hand in a satchel in a manner that led Hemple to believe he was holding a gun, who tried to conceal the gun when told to take his hand out of the bag and was using a satchel that, according to Hemple's experience, was consistent with how guns have been increasingly often been carried. These facts created a reasonable articulable suspicion that the

defendant was engaged in the criminal activity inside the store and the court erred in suppressing the handgun that was seized. The Court below committed error in finding that Hemple did not have a reasonable suspicion to justify asking the defendant to sit on the curb.

**Point II: As the detention of the defendant was justified, the handgun was found in plain view of the officer (T82-13 to 16)<sup>3</sup>**

The Fourth Amendment of the United States Constitution along with Article I, paragraph 7 of the New Jersey Constitution protects citizens from unreasonable searches and seizures by requiring warrants be issued based on probable cause. State v. Johnson, 171 N.J. 192, 205 (2002). A warrantless search is invalid *per se* unless an exception to the warrant requirement is met. State v. Valencia, 93 N.J. 126, 133 (1983). The State has the burden of establishing one of the exceptions to the warrant requirement is met. Id.

One such unforeseeable and spontaneous circumstance that can justify a warrantless search is an item seen by an officer in plain view. The plain view doctrine as first articulated in Coolidge v. New Hampshire, 403 U.S. 443 (1971) and adopted by New Jersey in State v. Bruzzese, 94 N.J. 210, 236-38 (1983), as an exception to the warrant requirement under the Fourth and Fourteenth Amendments, initially required that (1) the view of the item be obtained from a lawful vantage point, (2) that the item be immediately perceived as evidence of a crime or contraband, and (3) that the discovery of the evidence was inadvertent. This

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<sup>3</sup> While finding the investigatory stop improper, the court below did indicate that the handgun would have been in plain view if the detention was justified. (T82-13 to 16).

remained Federal law until 1990 when the U.S. Supreme Court in Horton v. California, 496 U.S. 128, 138 (1990), discontinued the inadvertent discovery requirement and amended to just the two-prong analysis of lawful vantage point and immediate perception as contraband or evidence. New Jersey courts also followed this precedent and removed the inadvertent requirement. State v. Gonzales, 227 N.J. 77, 99 (2016). Thus, to meet the plain view exception to the warrant requirement, the State must prove that (1) the officer's view was from a lawful vantage point and (2) that it was immediately apparent to police that the item is evidence of a crime or contraband. If both prongs are satisfied, probable cause exists for a warrantless search and seizure.

As indicated above, Hemple encountered the defendant as he was responding to a fight at a convenience store. As he was pulling into the parking lot, he observed the defendant walking away from the store. Hemple believed he was going to be investigating a fight at the convenience store, not search for a handgun. As the defendant was sitting down, Hemple observed the butt of a handgun protruding from the satchel and immediately knew that it was a handgun.

Applying the test as set forth in Gonzalez, it is clear that Hemple was in a lawful viewing position and observed what he immediately knew was a handgun. Therefore, the seizure of the handgun was lawful under the Plain View Exception to the warrant requirement.

**CONCLUSION**

For the reasons stated above, the motion court's order suppressing the seizure of the handgun must be reversed.

Respectfully submitted,

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SALEM COUNTY PROSECUTOR

By: s/Matthew M. Bingham  
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Date: February 10, 2025





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**LETTER-BRIEF ON BEHALF OF DEFENDANT-RESPONDENT**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1262-24 (AM-000136-24)

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Appellant,	:	On Leave Granted to Appeal an
v.	:	Interlocutory Order Entered by the
	:	Superior Court of New Jersey
KING H. JOHNSON,	:	Law Division, Salem County.
	:	Indictment No. 24-02-00054-I
Defendant-Respondent.	:	Sat Below:
.....	:	Hon. Russell A. DePersia, J.S.C.

Your Honors:

This letter-brief is respectfully submitted in lieu of a formal brief  
pursuant to R. 2:6-2(b).

DEFENDANT IS NOT CONFINED

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## **PROCEDURAL HISTORY**

King Johnson adopts the State's procedural history. (Sb1-2)<sup>1</sup>

## **COUNTER STATEMENT OF FACTS**

### **1. The Suppression Hearing**

At the suppression hearing, the trial court heard testimony from Sergeant Christopher Hemple, the officer who conducted the unlawful stop and search at issue. (T3-24 to 3-6) At around 6:00 p.m. on December 15, 2023, Hemple responded to a dispatch about an alleged fight inside a convenience store in Penns Grove. (T5-3 to 24, 6-8 to 11) The only information Hemple had about the individuals involved in the alleged fight was that they were Black men. (T6-17 to 20) Hemple drove approximately a half mile to the store. (T7-2 to 6)

As Hemple drove up to the store, he did not see a fight. Instead, he saw many individuals, including King Johnson, outside the store. (T7-10 to 17, 10-21 to 11-7) Some of these individuals, including Johnson, appeared to be Black men. (Db1: 10:29 to 10:41) Johnson was walking down the sidewalk; he had one hand in a fanny pack bag worn across his torso. (T7-16 to 8-2, 82-22

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<sup>1</sup> Johnson adopts the State's abbreviations and adds "Sb" for the State's merits brief and "Da" for the appendix to this response brief.

to 25) Hemple testified that he believed based on his training and experience that Johnson was holding a firearm in his bag. (T42-6 to 11)

Immediately, Hemple stopped and exited his car and ordered Johnson to stop and sit down on the curb. (T8-3 to 7, 8-12 to 13) Johnson complied; he stopped, removed his hand from the bag, and sat down. (T8-5 to 13; Pa8: 0:43 to 0:51) Johnson began to close the zipper to the bag but Hemple further ordered him not to touch it. (T8-10 to 13)

There were several problems with Hemple's testimony about the events leading to the stop. Although Hemple initially testified that the dispatch said the fight "possibly" involved weapons, he later said he did not remember; the trial court found no allegation that the fight involved weapons.<sup>2</sup> (T6-14 to 16, 37-18 to 19, 38-22 to 39-2, 83-13 to 14) Although Hemple testified that he believed Johnson was walking toward him, the trial court found the opposite -- that Johnson was already walking in that direction before Hemple arrived. (T82-19 to 25) Hemple's body camera footage shows that not only was Johnson not walking toward Hemple but was already passing Hemple before the stop. (Pa8: 0:39 to 51) Lastly, Hemple testified that Johnson was wearing a mask, but the body camera and surveillance footage shows Johnson's face was uncovered. (Pa8: 0:39 to 51; Da1: 10:25 to 10:30)

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<sup>2</sup> The trial court's factfinding is entitled to deference. S.S., 229 N.J. at 374.

After Johnson sat down on the curb, Hemple testified that he saw a firearm in plain view in the open bag. (T8-14 to 18, 10-3 to 10) Hemple then searched the bag and found a handgun and drugs. (T10-8 to 9) From Hemple arriving on the scene to searching the bag, this entire incident was about fifteen seconds long. (T11-21 to 25)

## **2. The Trial Court's Decision**

The trial court granted Johnson's motion to suppress the evidence seized from his bag. (Ma6) The court found that, based on the totality of the circumstances, Hemple did not have reasonable suspicion to stop Johnson. (T84-3 to 5) The court noted that Hemple was

called . . . not to an armed robbery, not to a gun case. There's no allegation that guns were at all involved in this scene. When he gets there, there is no fight. There is no fight occurring in the parking lot.

[(T82-20 to 83-16)]

Meanwhile, Johnson was "walking down the sidewalk and . . . has his hand on a bag in front of him, like most people would do coming out of a store." (T84-1 to 5, 84-11 to 19) Thus, the court found that Hemple unlawfully stopped Johnson and only saw the handgun in the open bag because of this unlawful stop. (T85-7 to 11) Based on these findings, the court found that Hemple unlawfully searched the bag to seize the handgun. (T82-16 to 18, 84-3 to 5)

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE STATE FAILED TO ESTABLISH THAT REASONABLE SUSPICION JUSTIFIED THE INVESTIGATORY STOP. THEREFORE, THE TRIAL COURT CORRECTLY SUPPRESSED THE RESULTING EVIDENCE.**

There was no reasonable suspicion to justify the unlawful stop of King Johnson for walking down the street with his hand in a bag near the scene of a fight. All the resulting evidence must be suppressed. Thus, the trial court's factual and legal conclusions are sound, and the order granting the motion to suppress must be affirmed.

This Court's review of a decision on a motion to suppress is deferential. State v. Ahmad, 246 N.J. 592, 609 (2021). The trial court's factual findings must be upheld when "supported by sufficient credible evidence in the record." State v. S.S., 229 N.J. 360, 374 (2017). "Those findings warrant particular deference when they are substantially influenced by [the trial court's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which the reviewing court cannot enjoy." State v. Rockford, 213 N.J. 424, 200 (2013). This Court must not disturb the trial court's factual findings unless they are "so clearly mistaken that the interests of justice demand intervention and correction." State v. Gamble, 218 N.J. 412, 425 (2014). The trial court's

legal conclusions are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022).

Our federal and state constitutions both guarantee “[t]he right of the people to be secure . . . against unreasonable searches and seizures[.]” U.S. Const. amend. IV; N.J. Const. art. I, par. 7. “No right is held more sacred, or is more carefully guarded . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” Terry v. Ohio, 392 U.S. 1, 9 (1968). To that end, the warrantless seizure of one’s person is presumptively invalid. State v. Edmonds, 211 N.J. 117, 129-30 (2012). The State bears the burden to establish by a preponderance of the evidence that the stop was justified by one of the few “well-delineated exception[] to the warrant requirement.” Ibid.

The exception at issue in this case is an investigatory stop. For this exception, the State must establish, based on the totality of the circumstances, that the officer had reasonable and particularized suspicion that the stopped person had engaged in, or was about to engage in, criminal activity. State v. Rosario, 229 N.J. 263, 272 (2017). An investigatory stop is only permitted when “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. Pineiro, 181 N.J. 13, 20 (2004) (quoting State v. Nishina, 175 N.J. 502, 510-511 (2003)). Accordingly, an investigatory stop can never be based on “arbitrary police practices, the officer’s subjective good faith, or a mere hunch.” State v. Coles, 218 N.J. 322, 343 (2014). An investigatory stop without reasonable suspicion is unlawful and any resulting evidence must be suppressed. State v. Elders, 192 N.J. 224, 247 (2007).

Our Supreme Court has affirmed that “a random stop based on nothing more than a non-particularized racial description of the person sought is especially subject to abuse.” State v. Shaw, 213 N.J. 398, 420-21 (2012). In Shaw, police went to a multi-unit building to execute an arrest warrant for a fugitive. Id. at 401, 411. The officers saw two Black men, the defendant and another individual, exit the building and immediately part ways, seemingly after seeing the officers. Id. at 403. “[T]he only features that [the testifying officer] could say [the defendant] shared in common with the targeted fugitive were that both were black and both were men.” Id. at 403. That similarity did not create reasonable suspicion to justify the stop, even when considering the officer’s suspicion that the defendant and other man parted ways to avoid police attention. Id. at 411-12; see also State v. Nyema, 249 N.J. 509, 531 (2022) (Holding that the defendant matching a description of suspects’ race and sex alone was of little to no value in a reasonable suspicion analysis).

Moreover, in State v. Williams, this Court held that a defendant's close proximity to possible criminal activity and ambiguous conduct did not establish reasonable suspicion either. 410 N.J. Super. 549, (App. Div. 2009). There, police responded to a dispatch about a possible retaliatory shooting at a housing complex. Id. at 552. Upon arriving at the complex, the officers saw a large group of people gathered outside. Id. at 553. One of these people, the defendant, was riding his bike around the scene. Ibid. When the defendant saw the officers, he started to ride away and put his right hand in his pants pocket. Ibid. The officers ordered the defendant to stop, but he continued to ride away before eventually being stopped. Ibid. Looking at the totality of the circumstances, this Court found the defendant's conduct when the officers first arrived was no more suspicious than anyone else's outside the complex. Id. at 556. Even when considering how the defendant rode away from the officers and the officers' belief that the defendant was hiding a weapon in his pocket, this Court nonetheless found such facts "did not provide any additional foundation for an objectively reasonable suspicion." Id. at 556-57.

Applying these principles to the totality of the circumstances here, the State cannot establish that Hemple had reasonable and particularized suspicion that Johnson had committed or was about to commit a crime. Hemple's observations and stop of Johnson occurred in mere seconds. Prior to the stop,

Hemple only knew: (1) there was an alleged fight involving Black men at the store and (2) Johnson, a Black man, was walking down the sidewalk in front of the store with his hand in his bag. Collectively, these facts in no way suggest that Johnson was engaged in criminal activity. “None of th[e]se non-specific, non-individualized factors . . . ‘meet the constitutional threshold of individualized reasonable suspicion’ that this particular defendant was engaged in criminal activity.” State v. Goldsmith, 251 N.J. at 405-406 (citing Nyema, 249 N.J. at 532).

Like in Shaw, Johnson’s mere presence as a Black man near the location of an alleged fight involving Black men cannot establish reasonable suspicion. Shaw, 213 N.J. at 410-412. The vague description of Black men could not assist Hemple in positively identifying a suspect; this was “descriptive of nothing.” Nyema, 249 N.J. at 531. This is especially true here, where Johnson was just one of many Black men outside the store, in a town where nearly half the residents are Black. See Penns Grove, NJ: Data USA, <https://datausa.io/profile/geo/penns-grove-nj> (last visited Feb. 24, 2025). Additionally, like in Shaw and Williams, the act of Johnson having his hand in his bag is not enough to create reasonable suspicion either. Like putting a hand in a pocket, putting a hand in a bag “is fairly common human conduct that does not generally involve the commission of a crime.” Williams, 410 N.J. at

557; see also State v. L.F., 316 N.J. Super. 174, 179 (App. Div. 1998) (“[T]he mere act of putting something from one’s hand into one’s own pocket while departing alone signifies nothing additional by way of reasonable suspicion.”). In fact, as the trial court found, this is something “most people would do coming out of a store.” (T84-1 to 2)

Hemple’s belief that Johnson was carrying a firearm was nothing more than an inarticulate hunch. Hemple was not investigating activity involving a weapon. Johnson did not exhibit any behavior to suggest he was avoiding the police presence or concealing the contents of his bag.<sup>3</sup> Hemple’s testimony that “it’s been a common trend lately” for individuals to carry weapons in cross-body bags like Johnson’s carries little weight; such a generalization cannot form the basis for particularized suspicion. Elders, 192 N.J. at 250. Moreover, Hemple had no reason to perceive Johnson as threatening him because Johnson was not walking toward him. See Williams, 410 N.J. Super at 557 (Holding that, because the defendant rode his bike “in the opposite direction from the officers, the officers could not have had any reasonable concern for their own safety.”).

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<sup>3</sup> Although cited as support for reasonable suspicion in the State’s brief, the fact that Johnson began to close the zipper to his bag is wholly irrelevant to this analysis because conduct exhibited or “[i]nformation acquired after a stop cannot retroactively serve as a basis for the stop.” Nyema, 249 N.J. at 532.

Thus, Hemple did not have reasonable suspicion to stop Johnson. Otherwise, the police could somehow find justification to stop every single Black man in the general area of the store. Nyema, 249 N.J. at 516 (Police investigation based on the “race and sex of the suspects, with no further descriptors . . . effectively placed every single Black male in the area under the veil of suspicion.”). The State fails to cite any case law to support its argument otherwise. Moreover, all the evidence seized was the direct result of this unlawful stop; Hemple only saw the handgun because Johnson sat down to comply with the unlawful order. Accordingly, this Court must affirm the trial court’s well-reasoned decision granting Johnson’s motion to suppress.

### **CONCLUSION**

For the aforementioned reasons, this Court must affirm the trial court’s well-reasoned decision.

Respectfully submitted,

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