SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2905-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New
v.	:	Jersey, Law Division, Union County.
RAHJAN ROBINSON A/K/A RAHJAN PEARSON,	:	Indictment No. 23-05-289-I
	:	Sat Below:
Defendant-Appellant.	:	Hon. Daniel Roberts, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

JENNIFER N. SELLITTI
Public Defender
Office of the Public Defender
Appellate Section
31 Clinton Street, 9th Floor
Newark, NJ 07101
Phone: 973-877-1200

RACHEL A. NECKES
Attorney Id. No. 381892021
Assistant Deputy Public Defender
Rachel.Neckes@opd.nj.gov

Of Counsel and
On the Brief

DEFENDANT IS CONFINED

TABLE OF CONTENTS

PAGE NOS.

TABLE OF JUDGMENTS, RULINGS, & ORDERS BEING APPEALED

INDEX TO APPENDIX

TABLE OF AUTHORITIES

PAGE NOS.

Cases

TABLE OF AUTHORITIES (CONT'D)

PAGE NOS.

Cases (Cont'd)

Statutes

TABLE OF AUTHORITIES (CONT'D)

PAGE NOS.

Constitutional Provisions

PRELIMINARY STATEMENT

Police may not randomly detain individuals to identify the target of an investigation without individualized suspicion that each person stopped committed a crime. Here, when members of the Elizabeth police department stopped Rahjan Pearson, they admitted that there were "no facts linking [him] to criminality." Nonetheless, officers ordered Pearson not to move so that they could identify and arrest a suspected drug dealer named Branden Little. But neither the two officers who testified at the suppression hearing nor any of the other sixteen surveilling officers near Jackson Avenue on February 10, 2023, reported seeing Pearson buy drugs, sell drugs, participate in a transaction, or engage in any other activity that could reasonably be characterized as criminal or suspicious. Without any particularized suspicion that Pearson committed a crime, the police's stop plainly violated Pearson's constitutional rights. Consequently, the fruits of the stop, including the officers' subsequent search of Pearson, must be suppressed.

Pearson's very brief flight—during which he ran from the officers who ordered him to stop before he tripped and was apprehended within twenty-five seconds—cannot purge the taint of the unconstitutional stop. The search was close in time to the initial illegality; the flight posed no danger to police or the public; and the officers' conduct in ordering Pearson to stop when there were

"no facts linking [him] to criminality" was particularly flagrant. The officers' flagrant misconduct in particular requires suppression because the random detention of an individual for the sole purpose of determining whether they are the target of an investigation offends our basic rights to freedom of movement. It is especially unreasonable when the police had been following their target, Little, all afternoon with a high-definition drone—given the extensive surveillance, the police in this case had an obligation to know who they intended to stop, rather than stopping anyone and everyone who happened to be in the vicinity of their suspect. The police search of Pearson was thus not attenuated from the officers' illegal action, and the evidence recovered during the ensuing search must be suppressed.

PROCEDURAL HISTORY

On March 10, 2023, a Union County grand jury issued Indictment No. 23-05-288 against defendant-appellant Rahjan Pearson,[1] charging him with: second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b(1) (Count One); second-degree possession of a firearm while committing a controlled-dangerous-substance offense, contrary to N.J.S.A. 2C:39-4.1a (Count Two); two counts of third-degree possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10a(1) (Counts Three and Six); two counts of third-degree possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 2C:35-5b(3) (Counts Four and Seven); two counts of second-degree possession of a controlled dangerous substance within 500 feet of certain public property, contrary to N.J.S.A. 2C:35-7.1a (Counts Five and Eight); and fourth-degree resisting arrest, contrary to N.J.S.A. 2C:29-2a(2) (Count Nine). (Da 1-5)[2] The indictment also charged

[1] Mr. Pearson was born as Rahjan Robinson and later changed his last name to Pearson. (4T 4-1 to 25) Some transcripts and appended documents refer to Pearson using either or both names.

[2] Da: Defendant-appellant's appendix
1T: Aug. 18, 2023 (motion to suppress)
2T: Oct. 20, 2023 (motion to suppress)
3T: Mar. 4, 2024 (plea)
4T: Apr. 19, 2024 (sentencing)
PSR: Presentence Report

Asher T. Conn, Branden L. Little, and Gary J. Whigman with various crimes. (Da 5-7) On the same day, the grand jury also issued Indictment No. 23-05-289, charging Pearson with second-degree certain persons not to have weapons, contrary to N.J.S.A. 2C:39-7b(1). (Da 8)

Pearson and co-defendant Conn jointly filed a motion to suppress physical evidence seized following their arrests. (2T 64-2 to 4) The Honorable Daniel Roberts, J.S.C., presided over a testimonial hearing on August 18, 2023, and October 20, 2023. (1T; 2T) The court orally denied the motion on the record on October 20. (2T 82-6 to 7) A corresponding order was issued on May 14, 2024. (Da 12)

On March 4, 2024, Pearson pleaded guilty to the certain persons charge in Indictment No. 23-05-289 in exchange for the dismissal of the charges in Indictment No. 23-05-288 and a recommended sentence of ten years with a five-year period of parole ineligibility. (3T 6-22 to 7-4, 18-24; Da 13-19) On April 19, 2024, Judge Roberts sentenced Pearson accordingly, imposing a sentence of ten years with a five-year period of parole ineligibility and dismissing the remaining charges. (4T 12-14 to 18, 13-1 to 3; Da 20-26) Pearson filed a timely notice of appeal. (Da 27-31)

STATEMENT OF FACTS

On February 10, 2023, police were surveilling a neighborhood in Elizabeth that testifying officers characterized as a high-crime area. (1T 9-2 to 12) The surveillance team included sixteen officers, many in plainclothes and unmarked vehicles, as well as a police-operated drone called the unmanned aerial system, which displays a live video feed to its operator. (1T 9-13 to 18, 15-24 to 16-6, 17-20 to 19-4) Throughout the afternoon, the drone operators and the officers on the ground were in close communication, relaying and corroborating each other's observations. (1T 18-22 to 19-4)

Officer Israel Morales, who testified at the hearing, was operating the drone and began tracking Branden Little—the officers recognized Little because he had been previously arrested and convicted for numerous narcotics offenses in Elizabeth. (1T 19-5 to 15) Over more than an hour, Morales tracked Little on the drone's live feed as Little engaged in two suspected hand-to-hand transactions on Jackson Avenue.[3] (1T 19-16 to 21-12, 27-9 to 25, 38-1 to 4) After the first transaction, police stopped the suspected buyer and recovered two small containers of presumed crack cocaine. (1T 20-3 to 16, 26-9 to 10) Sometime after the second transaction, Little left his suspected stash area on

[3] The State only produced video of the first alleged transaction. (1T 37-23 to 25)

Jackson Avenue and walked toward Anna Street, where he met two individuals later identified as Pearson and Conn. (1T 28-5 to 20)

No officer recognized Conn or Pearson at that time. (1T 28-10 to 20, 40-25 to 41-2; 2T 34-11 to 15) Neither Conn nor Pearson was observed near Little's stash location, buying or selling drugs, or exchanging any items with Little. (1T 41-11 to 25; 2T 16-2 to 21, 34-16 to 21) Not one of the sixteen surveilling officers reported suspicion that Pearson or Conn possessed drugs or weapons or had engaged in any other alleged criminal activity. (1T 41-18 to 42-22, 50-8 to 24; 2T 34-16 to 35-11) In fact, Morales confirmed that at the time Pearson and Conn met Little, "there were no facts linking them to criminality." (1T 59-20 to 21)

Nonetheless, immediately after Little began walking with Pearson and Conn, Morales "relayed the information" that Little was a suspected drug dealer "to the units out in the field" and instructed them to "quickly and safely apprehend [Little] as soon as possible." (1T 30-6 to 10) Detective Kevin Arias, who also testified at the hearing, and Officer Juan Londono responded. (1T 30-12 to 15) The officers drove a nondescript vehicle and were in plainclothes so that only their badges, body-worn cameras, and holstered weapons were

visible. (2T 6-15 to 21; Da 9 at 0:40 to 0:49)[4] Londono exited his vehicle around the corner from Pearson, Conn, and Little and approached them on foot. (1T 46-7 to 9, 46-23 to 47-3; Da 10 at 0:14 to 0:40) Arias stopped his vehicle feet away from the three men and quickly exited with his hand on his holster. (1T 53-13 to 14)

Arias ordered the trio to stop. (1T 30-20 to 23; 2T 8-23) Simultaneously, Londono rounded the corner and yelled "don't fucking move." (1T 47-9 to 11; Da 10 at 0:41) Arias testified that he did not know who of the three men was Little because all three were "wearing all black." (2T 8-12 to 24, 19-25 to 20-5, 23-1 to 7) He therefore needed to "assess[] the situation" and told "all parties to stop moving." (2T 8-19 to 24, 19-25 to 20-4, 22-21 to 23, 24-9 to 14) Even though Morales had been tracking Little for hours using the drone and even though Arias had previously arrested Little, Arias determined that he needed stop all three individuals to safely identify and arrest Little.[5] (2T 18-23 to 19-10, 22-21 to 23-7, 26-24 to 27-4)

---

[4] Drone footage of the stop of Pearson, Conn, and Little was admitted into evidence at the hearing. (1T 32-15; Da 9) Footage from Londono's body-worn camera (1T 46-17; Da 10) and from Arias' body-worn camera (1T 11-8; Da 11) was also admitted.

[5] The testimony as to whether Arias received a description of Little is unclear. Arias testified that, because he knew Little from a previous arrest, the drone operators did "not necessarily" provide a description and he did not recall receiving one. (2T 18-6 to 19-10) But at other times, Arias testified that he was

Within seconds of the stop, Conn and Pearson began to run while Little remained still. (1T 30-23 to 25; Da 9 at 0:43 to 0:54) Instead of staying with Little, the target of the investigation and the only person linked to criminal activity, Arias pursued Conn and Londono pursued Pearson. (2T 9-4 to 11; Da 9 at 0:43 to 0:54) Arias followed Conn across the street and quickly apprehended him. (Da 9 at 0:47 to 0:54; Da 11 at 0:27 to 0:34) During the seven second pursuit, Arias sprained his ankle. (2T 14-4) Pearson ran down Anna Street and quickly tripped in an alleyway; within twenty-five seconds of the stop, Londono apprehended him. (Da 10 at 0:41 to 1:05)

After Pearson was handcuffed, a uniformed officer searched his person. (Da 10 at 2:21) That officer recovered a fanny pack and found within it a weapon, four live rounds, fifteen glassine envelopes of heroin, nine small containers of cocaine, and forty-six dollars. (1T 35-3 to 23) After his arrest, Pearson asked the officers, "somebody told on me?" (Da 10 at 3:00 to 3:05, 4:21)

---

looking for someone "wearing black" and that he was told Little was wearing a "black sweatshirt" or an "all-black outfit," implying that he had some idea of who he was supposed to arrest. (2T 24-6 to 24) Notably, neither Conn nor Pearson is wearing black: Conn is clearly wearing a green coat and not all black, while Londono's body-worn camera shows Pearson wearing a navy coat and blue jeans. (2T 40-23 to 41-12; Da 9 at 0:09 to 0:15, Da 10 at 2:07-2:13)

After hearing testimony from Morales and Arias, the court found that the testifying officers were credible but that Arias was "somewhat . . . confused." (2T 71-9 to 11, 72-6 to 13) The court also found that the neighborhood was a high-crime area and that, after the police ordered Little, Pearson, and Conn to stop, Pearson and Conn fled while Little remained still. (2T 64-21 to 23, 67-10 to 14) The court further observed that if Conn and Pearson "had merely stood still, we wouldn't be here today." (2T 75-9 to 11) Nonetheless, the court found that there was reasonable suspicion to stop Pearson because he was speaking with someone police observed selling drugs in a high-crime area. (2T 78-9 to 18, 79-9 to 23) The court also found that Conn and Pearson's flight from the stop raised that suspicion to probable cause, justifying the police pursuit and arrest of both men. (2T 81-15 to 82-5) The court noted that it had "no doubt" that Conn and Pearson knew that they were running from police because, following Pearson's arrest, he asked, "who told on me?" (2T 79-2 to 8) Accordingly, the court denied Pearson's motion to suppress.

LEGAL ARGUMENT

POINT I

BECAUSE THE OFFICERS' INVESTIGATORY STOP VIOLATED PEARSON'S CONSTITUTIONAL RIGHTS, THE FRUITS OF THE ILLEGAL STOP MUST BE SUPPRESSED. (2T 64-2 to 82-7; Da 12)

Both Morales and Arias testified that there was no reason to believe that Pearson engaged in any criminal activity at the time of the stop. Instead, the officers stopped Pearson for the sole purpose of locating and arresting a suspected drug dealer. Although the court itself admitted that, had Pearson remained stationary during the stop, "we wouldn't be here today," it still concluded that the officers had the requisite suspicion to detain him. (2T 75-9 to 11, 79-9 to 23) Further, because Pearson briefly fled from the stop, the court found that there was probable cause to justify the arrest and search. (2T 81-15 to 82-5) But the stop of Pearson was not supported by individualized suspicion of any kind—merely speaking to a suspected drug dealer is not sufficient. Because this stop violated Pearson's constitutional rights, the resulting physical evidence must be suppressed, and the court's order admitting this evidence must be reversed. See Wong Sun v. United States, 371 U.S. 471, 487-88 (1963).

A. The stop was illegal because officers had no reason to suspect Pearson of criminal activity.

The United States and New Jersey Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7. "Because warrantless stops and searches are presumptively invalid, the State bears the burden of establishing that any such stop or search is justified by one of the 'well-delineated exceptions' to the warrant requirement.'" State v. Shaw, 213 N.J. 398, 409 (2012) (quoting State v. Frankel, 179 N.J. 586, 598 (2004)).

One such exception is an investigatory stop. Although it amounts to a constitutional seizure, an investigatory stop is valid if the officer has "particularized suspicion . . . meaning '[t]he stop must be reasonable and justified by articulable facts; it may not be based on arbitrary police practices, the officer's subjective good faith, or a mere hunch.'" State v. Shaw, 237 N.J. 588, 612 (2019) (citing State v. Chisum, 236 N.J. 530, 545 (2019) and quoting State v. Coles, 218 N.J. 322, 343 (2014)). "There must be 'some objective manifestation that the suspect was or is involved in criminal activity.'" State v. Arthur, 149 N.J. 1, 8 (1997) (quoting State v. Thomas, 110 N.J. 673, 678 (1988)).

Arias and Londono conducted an investigatory stop of Pearson when they ordered him not to move. See State v. Williams (Williams II), 410 N.J.

Super. 549, 554-55 (App. Div. 2009) certif. denied, 201 N.J. 440 (2010) (finding it "undisputed" that defendant was subject to an investigatory stop when police ordered him to stop); State v. Crawley, 187 N.J. 440, 444-45, 450 (2006) (holding defendant was subject to an investigatory stop after police said, "Police. Stop. I need to speak with you"); State v. Stovall, 170 N.J. 346, 355 (2002) (confirming that a person is seized when "a reasonable person would have believed that he [or she] was not free to leave"). (1T 30-12 to 25; 2T 8-5 to 24, 67-10)

For that stop to be constitutional, police needed reasonable, articulable suspicion that Pearson himself was involved in criminal activity. However, the testifying officers here admitted that, at the time of the stop, "there were no facts linking [Pearson] to criminality." (1T 59-20 to 21) Indeed, the surveilling officers did not know or recognize Pearson (1T 40-25 to 41-2; 2T 34-11 to 15); they did not see Pearson buy drugs, sell drugs, go to Little's stash location, or engage in any kind of transaction with Little (1T 41-11 to 42-7; 2T 16-2 to 21, 34-16 to 25); and they did not witness Pearson engage in any other activity that could reasonably be characterized as suspicious or criminal. (1T 41-18 to 43-4, 50-8 to 24; 2T 34-16 to 35-11) Rather, Pearson was only stopped because he was standing next to Little and Conn, and the responding officers could not identify Little in the trio. (1T 43-2 to 4; 2T 24-6 to 14) The officers' testimony

explicitly highlights that there was no "objective manifestation" that Pearson "was or is involved in criminal activity.'" Arthur, 149 N.J. at 8.

Still, the hearing court found reasonable suspicion to justify the stop because Pearson was speaking with a suspected drug dealer in a high-crime area.[6] (2T 78-9 to 18, 79-9 to 23) These facts simply do not give rise to the individualized, particularized suspicion our federal and State constitutions require. See State v. Rivera, 276 N.J. Super. 346, 352 (App. Div. 1994) (quoting Ybarra v. Illinois, 444 U.S. 85, 91 (1979)) (explaining that the particularity requirement "cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another . . . where the person may happen to be"); see also State v. Goldsmith, 251 N.J. 384, 403 (2022) (citations omitted) ("[J]ust because crime is prevalent in a particular area 'does not mean that residents in those areas have lesser constitutional protection from random stops.'"). The facts in this case fall short especially because, here, there is no suspicion whatsoever that Pearson participated in a drug transaction. Cf. State v. Pineiro, 181 N.J. 13, 18, 25

[6] The court also relied upon Pearson's post-arrest statements to find that Pearson knew that the plainclothes officers were police when he fled. (2T 78-19 to 79-8) But Pearson gave no such indication that he knew the officers were police until after the initial stop when a uniformed officer searched his person. (Da 10 at 2:24 to 3:05) Further, his statements came after his arrest, prior to any Miranda warnings, in response to police questions like "what else you got?" and "what are you running for?" (Da 10 at 2:37, 2:50 to 2:55)

(2004) (finding reasonable suspicion to stop a known drug dealer when an officer saw a him pass a cigarette pack to a known drug user and neither was smoking); Arthur, 149 N.J. at 4-5, 10 (finding reasonable suspicion when defendant entered a parked car in a high-crime area empty handed but exited with a brown paper bag that she tried to conceal). Because the officers' stop of Pearson was based on no individualized or particularized suspicion, the stop was illegal.

B. The fruits of the illegal stop were not attenuated and must be suppressed.

After the illegal stop, Pearson briefly fled, tripped, and was apprehended by officers who arrested and searched him, finding drugs and a gun. Because the seized evidence was the fruit of an illegal stop, it must be suppressed under the exclusionary rule. Wong Sun, 371 U.S. at 487-88; State v. Tucker, 136 N.J. 158, 172-73 (1994). Our courts require the suppression of illegally obtained evidence for two central reasons: first, it deters future unlawful police misconduct "by denying the prosecution the spoils of constitutional violations;" and second, it "uphold[s] judicial integrity" by refusing to "provide a forum for evidence procured by unconstitutional means." Shaw, 213 N.J. at 413 (citations omitted and cleaned up). The rule thus functions to deter police misconduct, ensuring that officials will be in no way rewarded or motivated to violate constitutional principles. Id. at 414.

Only if law enforcement secures physical evidence independently from its own illegal conduct may that evidence still be admitted. Ibid. Accordingly, the physical evidence in this case is only admissible if its seizure was "sufficiently independent to dissipate the taint of [the officers'] illegal conduct." State v. Williams (Williams I), 192 N.J. 1, 15 (2007) (citations omitted). In evaluating whether evidence is sufficiently attenuated from a constitutional violation, courts look to three factors: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Ibid. (citing Brown v. Illinois, 422 U.S. 590, 603-04 (1975)). In this case, all three factors weigh in favor of suppression, illustrating that the seizure of evidence was not sufficiently attenuated from law enforcement's violation of Pearson's constitutional rights.

First, the illegal police conduct occurred twenty-five seconds before Pearson's arrest, indicating that the first factor weighs in favor of suppression. Although this factor is the "least determinative" of the three, the brief twenty-five seconds that elapsed between the illegal stop and the arrest of Pearson, as well as the search which occurred soon after, demonstrate that the search of Pearson was not sufficiently attenuated. See id. at 15-16 (quoting State v.

Worlock, 117 N.J. 596, 622-23 (1990)) (noting that the short police chase after defendant's flight demonstrated that this factor weighed toward suppression).

Factor two also weighs in favor of suppression because Pearson's short flight was not a significant intervening circumstance capable of dispelling the illegal police action. This Court has made clear that not every act of flight or obstruction will constitute "an intervening act . . . that completely purge[s] the taint from the unconstitutional investigatory stop." Williams II, 410 N.J. Super. at 560. A comparison between Williams I and Williams II highlights this distinction. In Williams I, a uniformed officer exited his marked patrol car, approached the defendant, and asked him to put his hands on his head and submit to a frisk. 192 N.J. at 4-5. Rather than submit, the defendant pushed the officer and fled. Ibid. The officer chased the defendant, seized and searched him, and found a gun. Ibid. The Court held that the gun did not need to be suppressed because the defendant's actions of pushing the police officer and fleeing amounted to intervening circumstances sufficient to purge the taint from the initial illegal stop. Id. at 16-18.

In Williams II, this Court clarified the application of attenuation when a defendant commits obstruction by fleeing a police order to stop, distinguishing between a defendant who merely refuses to obey a command and a defendant who creates additional danger to either the police or public. 410 N.J. Super. at

563. The Court observed that when the defendant in Williams I pushed the officer and fled, he "posed a risk of physical injury to police officers," so the taint from the initial illegal stop dissipated. Ibid. In contrast, the defendant in Williams II rode away on his bicycle after a plainclothes officer ordered him to stop, but did not "engage in any act of physical aggression" towards the officers. Ibid.; cf. State v. Herrerra, 211 N.J. 308, 313, 336 (2012) (denying application of the exclusionary rule to the fruits of a potentially illegal stop when defendants "tried to overpower" the officer by choking him and reaching for his firearm). Thus, in Williams II, there were no intervening circumstances creating an independent danger to purge the taint from the illegal stop, compelling suppression of the subsequently seized evidence. 410 N.J. Super. at 563-64; cf. State v. Seymour, 289 N.J. Super. 80, 87-88 (App. Div. 1996) (holding that when defendant refused to stop his car for police and led officers on a mile-long car chase at up to fifty miles per hour, the chase constituted an intervening circumstance that put the defendant, officers, and public in danger); State v. Battle, 256 N.J. Super. 268, 273-74 (App. Div. 1992) (holding that there can be no exclusion of evidence found following defendant's return to his stopped car and flight at forty miles per hour, during which he physically struggled with an officer in the passenger seat).

Here, unlike Williams I, Herrerra, Seymour, or Battle, there were no intervening circumstances sufficient to dissipate the taint from the illegal stop. Pearson's flight from the illegal stop lasted no more than twenty-five seconds. (Da 10 at 0:41 to 1:05). Londono seized and handcuffed Pearson after Pearson had already tripped in the alleyway, posing no danger to Londono. Pearson did not engage in any act of aggression towards the officers, and his brief flight did not put the officers at risk of physical injury. See Williams II, 410 N.J. Super. at 563 (suppressing evidence when the "defendant did not force the officers to engage in a lengthy and dangerous pursuit to apprehend him or engage in any action of physical aggression"). And, unlike Williams I, where officers were uniformed and in marked cars, in this case, like Williams II, the officers wore plainclothes and jumped out of an unmarked car, further minimizing any possible attenuation. The lack of an intervening circumstance to purge the taint of illegality martials factor two in favor of suppression.

Finally, the third factor in the attenuation analysis, the flagrancy of the police conduct, weighs most heavily in favor of suppression. Police action is unlikely to be flagrant when a stop is illegal but based on some individualized suspicion. In Williams I, for example, officers on patrol at 2:00 a.m. received a dispatch that "a black man wearing a black jacket was possibly selling drugs" at a specific address. 192 N.J. at 4-5. The neighborhood surrounding that home

was known to the officers as being "rampant with weapons and drug-dealing offenses." Id. at 5. The officers responded to the reported address and saw two black men wearing black jackets in front of the home. Ibid. One of the men walked away, while the other, the defendant, was "shocked and unnerved" but remained in place. Ibid. The officers then approached the defendant to stop and frisk him. Ibid. The court held that, while it was "doubtful" that officers had the requisite suspicion for the stop, they merely "acted mistakenly" and their conduct was not flagrant. Id. at 9-10, 16.

Alternatively, police misconduct is flagrant when officers randomly detain a person to determine if he is the target of an investigation without any individualized suspicion. In Shaw, 213 N.J. at 402-03, officers approached a multi-unit apartment building in a high-crime area to execute an arrest warrant. The officers knew the warrant target was a black man but testified to no other identifying information. Id. at 403, 403 n.1. When defendant, a black man, exited the building and refused to give officers his name, the officers detained him. Id. at 403-04. More officers soon arrived, and one knew defendant not as the warrant target but as someone with an outstanding parole warrant. Id. at 404. The officers arrested and searched defendant, finding two bricks of heroin. Id. at 405. Our Supreme Court held that the stop was illegal and that the drugs had to be suppressed because the parole warrant did not purge the

taint of the initial illegality. Id. at 420-21. Focusing on flagrancy, the Court found that "[t]he random detention of an individual for the purpose of running a warrant check—or determining whether the person is wanted on a particular warrant—cannot be squared with values that inhere in the Fourth Amendment." Id. at 421. The Court weighed this factor heavily toward suppression because the "right of freedom of movement without unreasonable interference by government officials is not a matter for debate." Ibid. (citing State v. Chippero, 164 N.J. 342, 358 (2000)).

Likewise, here, the officers repeatedly acknowledged that they had no reason to believe that Pearson engaged in any criminal activity; rather, the officers stopped Pearson only to determine if he was Little, the target of their investigation. (1T 41-18 to 43-4, 50-8 to 24; 2T 8-12 to 24, 19-25 to 20-5) Thus, similarly to Shaw, the police stopped Pearson solely to determine if he was their target and not because of any individualized suspicion of criminality. See Rivera, 276 N.J. Super. at 352 (finding a search "especially troublesome" when "it was conducted in the course of pursuing another"). As Shaw emphatically affirms, the police may not detain every man on a city block only to assess if he is the person wanted for arrest without particularized suspicion. See also State v. Nyema, 249 N.J. 509, 531-32 (2022) (observing that vague descriptions of a suspect's race and gender unconstitutionally permit law

enforcement "to stop every Black man within a reasonable radius" of a reported crime).

Further, unlike Williams I, where the police stopped an individual matching the dispatcher's description in clothing, race, and gender at a specific address at two o'clock in the morning, this is not a case where reasonable suspicion is merely "doubtful" or where the question of reasonableness is a close call. 192 N.J. at 4-5, 9-10. Instead, the testifying officers in this case repeatedly acknowledged that there were no facts to support any individualized suspicion that Pearson had committed a crime and reaffirmed continually that Pearson was only stopped so that the officers could identify and arrest Little. Shaw plainly considers such police conduct to be unconstitutional, flagrant, and worthy of deterrence. 213 N.J. at 420-22.

Additionally, the police's extensive surveillance of Little prior to the illegal stop makes this misconduct even more egregious. Before the stop, Morales and other members of the narcotics team used a powerful drone to follow Little for hours, enjoying "free reign to fly the drone and zoom in and survey whatever" they wanted. (1T 48-20 to 21) Consequently, Morales and the other drone-operators must have known exactly who Little was and what he was wearing. Morales could have easily told the officers on the ground that Little was wearing a black puffy jacket, black pants, and white sneakers, and

was not the man in jeans and a navy jacket (Pearson) or the man in a green jacket (Conn). (Da 9 at 0:09 to 0:15, Da 10 at 2:09 to 2:13) Not only was the failure to provide Little's identifying characteristics to ensure the seizure of the correct person wholly unreasonable, but also it needlessly emboldened the arresting officers to unconstitutionally stop anyone on the corner of Catherine and Anna Street. Our courts must deter such illegal police action. See Shaw, 213 N.J. at 419 (affirming that "application of the exclusionary rule" is necessary to ensure "the right of all individuals to be free from random stops" and to make clear that such "constitutional misconduct will not be tolerated").

Moreover, our case law directs courts to consider the sum of information available to police at the time of a stop when analyzing its reasonableness, including information that is not relayed to an arresting officer. See Crawley, 187 N.J. at 457-58 (citing United States v. Hensley, 469 U.S. 221, 230-31 (1985)) (explaining that information possessed by a dispatcher is imputed to responding officers and critical to the probable cause or reasonable suspicion analysis). Applying that principle here emphasizes the flagrancy of this stop, as the police had all the information necessary to conduct a legal arrest of Little without violating the rights of other passersby like Pearson and Conn. Indeed, it seems impossible that the police, who had been surveilling this neighborhood throughout the day, could know that there was probable cause to

arrest Little and know that Pearson and Conn were not suspected of any crime, but not have enough information to identify Little among the three individuals. As a result, the illegal police conduct in this case is even more flagrant than the conduct discussed in Shaw, where police had not been already surveilling the warrant target throughout the afternoon. Because this factor, along with the other two attenuation factors, demonstrates that no intervening circumstance dissipated the taint of the initial illegal stop, the court's order denying suppression must be reversed and this case remanded to afford Pearson the opportunity to withdraw his guilty plea. See Wong Sun, 371 U.S. at 487-88; Tucker, 136 N.J. at 172.

CONCLUSION

For the reasons set forth in Point I, the order denying Mr. Pearson's motion to suppress must be reversed and the case remanded to afford Mr. Pearson the opportunity to withdraw his guilty plea if he chooses to do so.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for the Defendant-Appellant

BY: /s/ Rachel A. Neckes
Assistant Deputy Public Defender
Attorney ID: 381892021

Dated: October 24, 2024

Superior Court of New Jersey
APPELLATE DIVISION
DOCKET NO. A- 2905-23T2

STATE OF NEW JERSEY, Plaintiff-Respondent, v. RAHJAN ROBINSON, A/K/A RAHJAN PEARSON, Defendant-Appellant.	CRIMINAL ACTION On Appeal from a Judgment of Conviction in the Law Division, Superior Court of New Jersey, Union County. Sat Below: Hon. Daniel Roberts, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT
STATE OF NEW JERSEY
RICHARD J. HUGHES JUSTICE COMPLEX
TRENTON, NEW JERSEY 08625

DEBORAH BARTOLOMEY
ATTORNEY NO. 030611989
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
APPELLATE BUREAU
P.O. BOX 086
TRENTON, NEW JERSEY 08625
(609) 376-2400
BartolomeyD@njdcj.org

OF COUNSEL AND ON THE BRIEF

January 6, 2025

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

PRELIMINARY STATEMENT

In response to citizen complaints about neighborhood crime, Eizabeth police conducted in-person and drone surveillance in the area of Anna Street. The surveillance team watched as a man with prior convictions for numerous narcotics offenses, Branden Little, conducted two drug transactions. A short time later, defendant and codefendant Asher Conn joined Little while he walked along Anna Street. Police officers arrived and, attempting to arrest Little, they ordered the trio to stop. These circumstances, when assessed in their totality, support a reasonable and articulable suspicion that criminal activity was occurring, and the stop was therefore constitutional.

Although Little complied with the lawful police order to stop, defendant and Conn ran across a well-trafficked city street with the police in pursuit, elevating the reasonable suspicion against defendant to probable cause to make an arrest and to search him incident to that arrest. Our law requires suspects to submit to a police officer's order, for reasons of safety. Defendant's unlawful flight therefore provided an alternate basis for his arrest and search. The police conduct in this matter was entirely reasonable, thus constitutional; the denial of the motion to suppress should be affirmed.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On May 10, 2023, Union County filed Indictment No. 23-05-0288-I, charging defendant-appellant Rahjan Pearson, a/k/a Rahjan Robinson,[1] with unlawful possession of a .38 special revolver, a second-degree offense contrary to N.J.S.A. 2C:39-5(b)(1) (count one); possession of a firearm while in the course of committing, attempting to commit or conspiring to commit a violation of N.J.S.A. 2C:35-5, a second-degree offense contrary to N.J.S.A. 2C:39-4.1(a) (count two); two counts of third-degree possession of a controlled dangerous substance contrary to N.J.S.A. 2C:35-10(a)(1) (counts three (cocaine) and six (heroin)); two counts of third-degree possession of a controlled dangerous substance with the intent to distribute, contrary to N.J.S.A. 2C:35-5(b)(3) (counts four (cocaine) and seven (heroin)); two counts of possession with intent to distribute within 500 feet of certain public property, a second-degree offense contrary to N.J.S.A. 2C:35-7.1(a) (counts five (cocaine) and eight (heroin)); and fourth-degree resisting arrest, contrary to N.J.S.A. 2C:29-2(a)(2) (count nine). (Da1-5).

Also on May 10, 2023, Union County Indictment No. 23-05-0289-I was filed, charging defendant with being a certain person not to have a firearm, a

[1] Codefendants Asher T. Conn, Branden L. Little, and Gary J. Whigman a/k/a Gary Whigham, were also charged in this indictment. (Da1-7).

second-degree offense contrary to N.J.S.A. 2C:39-7(b)(1). (Da8).

On August 18, 2023, and October 20, 2023, a motion by defendant and codefendant Asher Conn to suppress evidence was heard before the Honorable Daniel Roberts, J.S.C. (1T; 2T).[2] The judge set forth his reasons for denying the motion on the record at the conclusion of the hearing. (2T64-2 to 82-7). On May 14, 2024, the motion court memorialized its decision in a written order. (Da12).

On March 4, 2024, defendant pled guilty to the certain persons offense charged in Indictment 23-05-0289. (3T13-18 to 14-21).

On April 19, 2024, the court committed defendant to the custody of the Commissioner of the Department of Corrections for a term of ten years with a five-year minimum term for being a certain person not to have weapons and counts one through nine in Indictment No. 23-05-0288-I were dismissed, in accordance with the plea agreement. (3T7-1 to 4; 4T10-9 to 13-3; Da16).

On October 24, 2024, defendant filed his notice of appeal. (Da27-31).

---

[2] Defendant's transcript citations are adopted, as follows:

1T – motion transcript – August 18, 2023;
2T – motion transcript – October 20, 2023;
3T – plea transcript – March 4, 2024;
4T – sentencing transcript – April 19, 2024.

COUNTERSTATEMENT OF FACTS

A. Facts Presented at the Plea Hearing.

Defendant admitted that, on February 10, 2023, in the city of Elizabeth, he possessed a .38 special revolver, knowing that it was a firearm and that he did not have a permit and that he had been previously convicted of possessing a firearm without a permit; he knew that, as a result, he was legally determined to be a certain person not to possess weapons. (3T13-18 to 14-10).

B. Facts Presented at the Suppression Motion.

In February of 2023, Officer Israel Morales was a nine-year veteran of the Elizabeth Police force, assigned to the Narcotics Division. (1T4-8 to 5-15). During his career, Morales attended numerous courses in the subjects of arrest, search and seizure, identifying criminal vehicles, and other specialized areas of narcotics investigation. He also took extracurricular courses in his own time and at his own expense. (1T5-16 to 24). Officer Morales took continuous in-service training, including the Top Gun course, spoke to many former users and former distributors of narcotics, and was familiar with the many tactics used in dealing drugs. (1T5-25 to 6-20).

As a member of the Narcotics Division, Officer Morales was responsible to proactively address quality-of-life issues specific to narcotics and gangs, and had conducted prolonged investigations ending with recovery of sizeable

amounts of narcotics, weapons and currency. (1T6-21 to 7-7). Throughout his career, he participated in well over 200 narcotics-related investigations and more than 100 arrests. (1T7-8 to 18). In his experience, guns were often recovered in narcotics operations. Guns are a tool of the trade, used by drug dealers to protect their merchandise, profits, and territory from rival gangs. (1T7-19 to 9-1).

Drug sellers working in the area of Jackson Avenue and Bond Street in Elizabeth used an intricate, multi-tiered system for distributing drugs. (1T14-17 to 15-2). Under this system, a buyer would request narcotics from one individual, who would alert a second individual to retrieve the product that would then be handed to the buyer, with the money ending up in the hands of yet another individual. (1T15-3 to 8). The product typically would be held in a stash, or hidden location, where a particular amount could be retrieved as needed. (1T15-14 to 23). The system was intended to prevent the police from apprehending an individual with both product and cash in hand, allowing dealers to maintain a legal defense and also to protect their profits. (1T15-8 to 13).

On February 10, 2023, at about 3:00 in the afternoon, Officer Morales and approximately sixteen other members of the Narcotics Division were conducting a surveillance operation near Jefferson Park, and at the intersection

of Jackson Avenue and Bond Street and the intersection of Catherine Street and Flora Street. (1T9-2 to 18; 1T10-1 to 11). The surveillance location was selected under a plan to address crimes within the City of Elizabeth. (1T9-19 to 25). The selected area was beset by quality-of-life issues, including open-air drug distribution. Local residents and business owners complained about gang members loitering in the vicinity, crowding the sidewalk and street to gamble, drink, and use drugs in public. (1T10-15 to 11-8; 1T11-23 to 12-8).

Violent crime also plagued the area, notably assaults with fists and other weapons, shootings, and even homicides. (1T11-9 to 22). Approximately 100 arrests for narcotics offenses had taken place and about five to ten guns had been recovered in the previous two years. (1T13-13 to14-10). There were also approximately sixteen shootings and two homicides reported. (1T14-11 to 16). The police would typically receive at least 100 complaints and fifty service calls for the area within a single year. (1T12-9 to 17).

Trying to deter crime, Elizabeth police used a tactic known as "directed control," whereby police administrators designated priority areas of the city in which to concentrate a police presence. (1T12-18 to 13-12). During the February 10, 2023, surveillance operation, the officers were dressed in plain clothes, but displayed badges identifying themselves as Elizabeth police

officers and were equipped with body-worn cameras and holstered handguns that also were on display. (1T15-24 to 16-12).

The body-worn cameras were activated by double-tapping on the front; a red light on top of the camera indicated that the camera was recording. (1T16-13 to 22). The video reverted to thirty seconds before the camera was activated, but the ensuing thirty-second video would not have audio. Sound would be recorded after the thirty-second initial period elapsed. (1T16-23 to 17-6).

That afternoon, pedestrian and vehicle traffic at the location was constant. (1T17-7 to 16). In-person surveillance was conducted by officers in non-descript vehicles, some driving around the area and others parked while watching the area through binoculars. (1T17-20 to 18-6). In addition to the in-person surveillance, the Elizabeth Police Department used a U.A.S., or Unmanned Aerial System, essentially a drone, to provide an elevated and more comprehensive view. (1T18-7 to 17; 2T8-3 to 11; Da9). Video footage from the drone was displayed to the operator on a live feed. (1T18-18 to 21). During this surveillance operation, information was relayed from the drone operator to the other officers and from officers in the field back to the drone operator. (1T18-22 to 19-4; 2T8-7 to 11).

Officers conducting this surveillance observed an individual named Branden Little, known to the officers as having prior convictions for numerous narcotics offenses, walking back and forth in the area of Anna Street, Jackson Avenue and Bond Street, and interacting with other people. (1T19-5 to 25). In one interaction, Little appeared to conduct a hand-to-hand transaction with a man he flagged down who was later determined to be Gary Whigman. The two men walked to a house on the 400 block of Jackson Avenue where Little reached into a bush near the steps and removed a small item that he transferred to Whigman. (1T20-1 to 21-1; 22-10 to 20). The police officers' suspicions that a drug sale had taken place were confirmed when Whigman was apprehended in Jefferson Park and two small jugs of suspected crack cocaine were found on him. (1T20-6 to 20; 1T22-21 to 23-7; 1T26-9 to 15).

After the incident with Whigman, Little engaged in another suspected drug sale with another customer. In this second incident, Little made contact with an elderly man and, after a brief conversation, the two walked toward the same bush, apparently serving as a stash location, used in the previous sale. (1T27-9 to 21). Little sat on the stoop of the house next to the bush and retrieved a small object that he handed to the man, who then walked away northbound on Jackson Avenue. (1T27-21 to 25).

After that transaction, Little walked northward on Jackson Avenue toward Anna Street, meeting with two men who were unfamiliar to the officers. The trio walked east on Anna Street together. (1T28-9 to 15). One of the men was later determined to be defendant, the other was determined to be codefendant Asher Conn. (1T28-16 to 29-17).

Because of Little's suspected narcotics sales, Detective Kevin Arias and Officer Juan Londono, parked nearby in a nondescript vehicle, were told to apprehend him as quickly and safely as possible. (1T30-6 to 15). Detective Arias, on receiving information from his sergeant about Little's activities, prepared to place Little under arrest. (2T8-5 to 16). At that point, Arias had not yet seen anything himself; he was getting all of his information about the investigation over the radio. (2T8-16 to 18).

After dropping off Officer Londono, Detective Arias turned the corner and exited the vehicle with his detective shield hanging on a chain around his neck, his body-worn camera fully displayed, and his service weapon visible in the holster on his hip. (1T30-20 to 23; 1T31-1 to 9; 1T43-22 to 44-14; 2T6-13 to 7-4; Da9-0:00:45 to 0:00:50). Although he had interacted with Little in the past, the detective at that point was unable to pick Little out of the group at

that distance, as all three were standing together and all were dressed in black.[3] (2T26-13 to 16). Pointing with his hand-held radio at the three men, Arias ordered them to stop. Although Little complied, defendant and codefendant Conn took off running in different directions. (1T30-23 to 31-18; 2T8-19 to 9-3; 2T29-3 to 5; Da9-0:00:50 to 0:00:53). These events occurred within seconds. (2T29-6 to 9).

Detective Arias chased codefendant Conn across the street, where Conn ran into a parked car and lost his balance, causing Conn's handgun to fall to the ground as Arias tackled him. Conn eventually was arrested after a struggle. (1T31-18 to 22; 2T9-4 to 10-1; 2T9-4 to 10-11; 2T12-2 to 11; Da9-0:00:51 to 0:00:54; Da11-16:43:41 to 16:50:06). Conn possessed a black 9-millimeter semi-automatic handgun loaded with live 9-millimeter rounds, including four hollow-point bullets. (1T34-18 to 25; 2T10-15 to 11-3). The firearm had no serial number. (1T35-1 to 2; 2T10-22 to 24). During the pursuit, Detective Arias sprained his ankle when he caught his foot between the curb and the tire of the car that Conn had run into. (2T14-3 to 13).

---

[3] Defendant states that he was wearing navy instead of black and that Conn had on a green coat. (Db7-8, n.5). Nevertheless, all three men were wearing head-to-toe dark clothing. Conn wore black pants and, like the other two defendants, he wore a black hood pulled up around his face. (Da11-16:44:30). Defendant also wore a billed cap under his pulled-up hood. (Da10-16:44:38).

Pursued by Officer Londono, defendant fled across the busy street and into an alley leading to a resident's backyard, where his escape was thwarted when he crashed into several trash cans and recycling bins. When defendant was apprehended, a handgun was found inside a fanny pack he was wearing. (1T31-22 to 32-1; Da9-0:00:54 to 0:01:09; Da10-16:43:30 to 16:47:56). The firearm was a silver revolver loaded with four live rounds. (1T35-3 to 12). Defendant also was found in possession of fifteen glassine envelopes of suspected heroin, nine small plastic jugs of suspected cocaine, and $46 in cash. (1T35-13 to 23). More than once, defendant asked the officers, "Who told on me?" (Da10-16:45:46 to 16:45:55).

C. Arguments of the Parties.

The attorney for Conn argued that there was no reason for the police to stop either defendant. (2T42-15 to 43-11). When the court reminded counsel that these events transpired in less than 90 seconds, counsel argued that flight could not be used as a reason to approach the defendants. (2T43-12 to 46-18). Counsel also argued that Detective Arias was not credible, asserting that his testimony about knowing Branden Little was inconsistent, that Conn wore a green army jacket and thus was dressed differently from the others, and that, on cross-examination, the detective often answered, "I don't recall." (2T46-19 to 47-12).

The court engaged defense counsel in a colloquy having to do with whether a police officer must "turn a blind eye to individuals who immediately take flight in a situation where they are associating with an individual who was just observed selling drugs?" (2T50-14 to 21). Counsel responded that Little's drug sales predated his time with the defendants and that no overtly suspicious conduct, except for the flight, was observed. (2T50-22 to 52-16).

Defendant's attorney also argued that defendant and codefendant were merely in Little's presence and that firearms were often possessed in that area because of concerns that people would be targeted by criminals, and that the police did not sufficiently identify themselves. (2T52-19 to 54-18). The court asked counsel if the defense argument was that defendant had not known that they were running from police officers, and advised counsel to keep in mind that the court had seen the video of defendant's arrest, wherein defendant said, three times, "Who told on me?" (2T54-19 to 55-6). Co-counsel then joined in, arguing that if the police could say that events happened too fast for them to identify Branden Little, then the defendants could say that events were too fast for them to know that the officers were the police, which argument the court found unpersuasive. (2T55-14 to 25).

The prosecutor argued that despite previous encounters, in the few seconds in which these events transpired, Detective Arias had insufficient time

to process all of the information and to identify which of the three men was Branden Little. When two of the three individuals took off in different directions, the officer reasonably pursued them. (2T57-25 to 58-25).

The prosecutor also urged the court to consider the totality of the circumstances when it determines if there was reasonable suspicion to detain anyone. And, given the factors at play, such as the fact that Detective Morales specifically testified about why this area was considered a high-crime area and the fact that the officers had observed Little, a convicted drug dealer, conducting two recent drug transactions, it was reasonable to suspect that the three men were possibly conducting a drug transaction. (2T59-1 to 61-1).

Even assuming that the stop was not justified, the headlong flight of the two defendants created a potentially dangerous situation in this high-traffic location, and in fact Detective Arias was injured, amounting to an intervening circumstance. (2T61-2 to 62-22). Certainly, there was no flagrant police misconduct, and even if there were not sufficient reasonable suspicion, which there was, the fruits of the search would be admissible. (2T62-23 to 63-20).

D. The Motion Court's Findings.

After setting out the facts, (2T64-14 to 68-20), the procedural history, (2T68-21 to 69-11), the arguments of counsel, (2T69-12 to 70-6), and the law, (2T70-7 to 71-4), the court found the testimony of Officer Morales to be

credible in every regard. Morales directly answered the questions and was not in any way evasive. (2T71-9 to 17). The court also found Detective Arias credible, despite defense attempts to raise doubts about his credibility. Although the detective was somewhat confused in response to some of the questions, he was forthright and not attempting to evade or give untruthful responses. (2T71-25 to 74-22).

The court found that if the two defendants "had merely stood still, we wouldn't be here today." (2T75-9 to 11). The court had to look at all of the circumstances involved in the situation, including the body-worn camera footage, the drone footage, and the testimony of the police officers. (2T75-16 to 19). Although the defense might have been correct to argue that flight alone is not enough, here the flight was combined with other factors, and the police had to respond, short of arrest, to a suspicious situation, as "'[p]olice are not to be mere spectators of events'" and "'[n]ot every police pursuit is a seizure.'" (2T75-19 to 76-18) (quoting State v. Tucker, 136 N.J. 158, 173 (1994)).

The court further noted that Terry v. Ohio, 392 U.S. 1 (1968), and its progeny recognize the need of police officers to respond to suspicious situations with a brief stop for questioning if they are to investigate and prevent crime. (2T76-19 to 23). While the New Jersey Supreme Court did not find the seizure justified in Tucker, under the circumstances in this case the

opposite is true. (2T76-24 to 77-7).

The court found that the defense argument might have merit if the circumstances were to be taken apart piece by piece but, when they are looked at in their entirety, with the overall situation considered in light of the evidence, including the video, there existed a well-grounded suspicion that criminal activity was afoot and that the persons might be armed and dangerous. (2T77-7 to 79-23). The court further found that probable cause for arrest existed, given the drug transactions conducted by Little, the drugs found on one of Little's customers, the defendants walking in the area with Little, the flight of the defendants from the police, and Conn's gun dislodging within seconds of his flight. (2T79-24 to 82-5). The court therefore denied defendants' motion to suppress. (2T82-6 to 8).

This appeal follows.

LEGAL ARGUMENT

POINT I

THE POLICE HAD A REASONABLE ARTICULABLE SUSPICION TO STOP DEFENDANT, AND THE DENIAL OF HIS MOTION TO SUPPRESS HIS LOADED GUN, DRUGS AND CASH SHOULD BE AFFIRMED.

Defendant says that the investigatory stop was based on his "merely speaking to a drug dealer," (Db10), rather than on a reasonable suspicion that criminal activity was afoot. According to the governing caselaw, however, police officers may detain for investigation three men seen together when one of them has just been observed conducting drug sales on the street in an area beset by crime. At the suppression motion, testimony described officers conducting a surveillance operation spurred by citizen complaints that the neighborhood was crime-ridden and rife with narcotics activity. Police testimony described the ways in which the illegal drug trade operated in the neighborhood so as to minimize risk of prosecution and risks posed by business rivals. Far more was occurring in this scenario than the defendants' flight upon seeing the police.

Moreover, when the attempt to arrest the drug dealer was impeded by the flight of his companions, the officers had the right, in fact the obligation, to pursue them. Police officers are not mere spectators and, as the trial court

noted, if the two defendants "had merely stood still, we wouldn't be here today." (2T75-9 to 11). Defendant could have chosen to simply stand by and allow the officers to arrest Little, as Little himself did. But, by fleeing across a busy city street, defendant interfered, endangering police, himself, and everyone else in the vicinity. In fact, the detective who was forced to chase the codefendant was injured. Defendant's unlawful conduct should not be rewarded by suppressing the loaded gun, cocaine and currency found in his possession. As the motion court ruled, the police actions were reasonable.

Review by an appellate court of the trial court's factual findings on a motion to suppress evidence is limited, and those "findings should be disturbed only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). The legal questions, however, are examined de novo on appeal. State v. Gandhi, 201 N.J. 161, 176 (2010). Given that the motion court in this case correctly applied the relevant law to the facts it found after a full and fair evidentiary hearing, its denial of defendant's motion to suppress should be upheld.

A. The Investigatory Detention of Defendant was Based on Reasonable and Articulable Suspicion and Therefore Constitutional.

This Court evaluates police conduct under the Fourth Amendment of the federal constitution and under Article I, Paragraph 7, of our state constitution,

which protect against "unreasonable searches and seizures" by government officials. State v. Watts, 223 N.J. 503, 513 (2015). Because this case involves an investigatory detention, it does not involve the type of police-citizen encounter subject to the Warrant Clause nor does it require probable cause. See Terry v. Ohio, 392 U.S. 1, 20 (1968). "Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." Ibid.

"The question is whether in all the circumstances of this on-the-street encounter, [a defendant's] right to personal security was violated by an unreasonable search and seizure." Terry, 392 U.S. at 9. "Under the Terry doctrine, provided articulable suspicion exists, police officers are permitted to use an official "show of authority," to detain the person with physical force, and to search the person for weapons." State v. Tucker, 136 N.J. 158, 173 (1994). A reasonable and particularized suspicion is founded on articulable facts rather than "'on arbitrary police practices, the officer's subjective good faith, or a mere hunch.'" State v. Shaw, 237 N.J. 588, 612 (2019) (quoting State v. Coles, 218 N.J. 322, 343 (2014)).

In Terry v. Ohio, the Supreme Court of the United States held that it is not unreasonable for a police officer to seize a person and conduct a limited search for weapons without probable cause for an arrest. 392 U.S. at 15; see also State v.

Rodriguez, 172 N.J. 117, 127 (2002) (holding articulable suspicion lower standard than probable cause necessary to sustain an arrest); State v. Citarella, 154 N.J. 272, 279 (1998) (same). As an intermediate response between arresting a suspect and ignoring a potential crime, an investigatory detention to obtain more information may be "the essence of good police work." Adams v. Williams, 407 U.S. 143, 145-46 (1972) (citing Terry, 392 U.S. at 23).

An investigatory stop is permitted if investigating officers had a reasonable and particularized suspicion to believe that the defendant had just engaged in, or was about to engage in, criminal activity. 392 U.S. at 21. That is, if the officer "observes unusual conduct" leading the officer reasonably to conclude in light of the officer's experience "that criminal activity may be afoot" the officer may stop the person. Terry, 392 U.S at 30.

Defendant appears to assume that his flight from the stop should have been disregarded, but police officers are not "mere spectators of events. They may pursue persons to further investigation." Tucker, 136 N.J. at 173. "'The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.'" State v. Arthur, 149 N.J. 1, 8 (1997) (quoting Williams, 407 U.S. at 145). The officers in this case were reacting to defendants' flight in real time, within seconds.

This Court assesses the reasonableness of police conduct by considering "the circumstances facing the officers who had to make on-the-spot decisions in a fluid situation." Watts, 223 N.J. at 514.

In State v. Tucker, our Supreme Court held that the flight of a suspect alone, without other articulable suspicion of criminal activity, does not meet the Terry standard for articulable suspicion. 136 N.J. at 173. If a defendant's flight is the sole indicator of criminal activity, the police seizure is not justified. Ibid. In this case, however, defendant's flight was not the only basis for reasonable suspicion. Beyond his flight, defendant and codefendant were affiliating with someone conducting drug trafficking in a crime-ridden location, possibly taking part in an ongoing drug enterprise. The investigating officers had a reasonable suspicion to believe that defendant had just engaged in, or was about to engage in, criminal activity, allowing for an investigatory stop to detain defendant and to search him for weapons. See ibid.

In cases like this one, where a suspect's flight is followed by a police pursuit, the focal issue is whether the case "is controlled by Tucker, 136 N.J. 158, or by State v. Doss, 254 N.J.Super. 122 (App. Div.) certif. denied, 130 N.J. 17 (1992), cited with approval in Tucker, 136 N.J. at 169–70." State v. Ruiz, 286 N.J. Super. 155, 159 (App. Div. 1995), certif. denied, 143 N.J. 519 (1996); In re J.B., 284 N.J. Super. 513, 518-19 (App. Div. 1995). The Court

decides whether the facts more resemble those in Tucker, where the motion to suppress was granted, or those in Doss, where it was denied. Ibid. Essentially, the issue boils down to whether the facts involve the flight of the defendant alone, or whether other articulable suspicion of criminal activity exists in addition to the flight, in which case suppression of the evidence is denied. See Tucker, 136 N.J. at 173.

In Tucker, Trenton police officers, patrolling a city street, saw two men sitting on a curb behind a house; one of the men was drinking from a bottle wrapped in a brown paper bag. 136 N.J. at 161–62. When the men saw the police car, the man with the bottle remained seated while the other man, Tucker, quickly stood up and fled. Id. at 162. The police gave chase. During his flight, Tucker threw a bag containing crack cocaine into an opening under a back porch, before being stopped when he ran directly into a police officer. Ibid.

The New Jersey Supreme Court distinguished the facts of Tucker from those in Doss, a case in which police officers in unmarked vehicles were patrolling a parking area where drug trafficking was known to be prevalent. Tucker, 136 N.J. at 169-70 (discussing Doss, 254 N.J. Super. at 125). Someone alerted a group of approximately twenty people gathered nearby that an approaching car was a police vehicle. Id. at 170. Three or four of the

people in the crowd, along with the defendant, ran. Police followed the defendant in their car until he entered an alley, when they got out and pursued him on foot. Ibid. The police repeatedly commanded the defendant to halt. Ibid. When the fleeing defendant ran into an illuminated area, the detective in pursuit recognized him as someone whom he had previously observed on several occasions talking with convicted drug dealers. Ibid. The detective testified that he suspected that the defendant had run because he had committed a crime or that a warrant had issued for his arrest. Ibid.

Because the defendant in Doss was recognized as someone who had previously been observed talking to convicted drug dealers and was found congregating with a crowd in a drug-trafficking area before fleeing at the sight of the police, the circumstances supported the officer's articulable suspicion to stop and interrogate defendant. Ibid. By contrast, in Tucker, "'the only ostensible basis for [the police] to have pursued defendant was that defendant had inexplicably fled when he saw the police van.'" Ibid. (quoting State v. Tucker, 265 N.J. Super. 358, 360 (App. Div. 1993), aff'd, 136 N.J. 158 (1994)). Certainly, this case, where, before fleeing at the sight of the police, defendants were walking around in a drug-trafficking area with a drug dealer who had just completed two drug sales, is more similar to Doss than Tucker, where suspicion was founded on "flight alone."

Similarly, in State v. Ruiz, as in this case, the police were conducting an undercover surveillance operation of an area frequented by buyers and sellers of illegal drugs. 286 N.J. Super. at 157. The defendant in Ruiz was the subject of a radio communication from members of the surveillance team alerting other officers that someone was walking in that area. Ibid. The responding officer drove his unmarked vehicle to the area, pulled alongside the pedestrian with his window rolled down, and stopped. The officer and the pedestrian looked at each other. The officer recognized the pedestrian as Ruiz, whom he knew by name, having participated in arrests involving him and from "just general street contacts with him." Ibid. The officer also knew that Ruiz had recently been arrested nearby for drug offenses with a group of young men. Ibid.

When the officer and Ruiz made eye contact, Ruiz looked surprised, uttered an expletive and immediately turned and ran in a northerly direction. Ibid. The officer got out of his car and gave chase, yelling, "Stop, police!" at least once. Id. at 157-58. A second officer also got out of the car and began to chase Ruiz, who, ignoring police commands to stop, ran without looking back. Ibid. The first officer kept Ruiz in sight during most of the chase, during which Ruiz ran through yards, hopped over fences, and tossed away several items. Ibid. The police retrieved the tossed items. Ibid. At the suppression

hearing, the officer testified that his purpose in pulling alongside Ruiz before the flight and ensuing chase was to see who it was, ask him where he was coming from and ask where he was going. Ibid.

This Court distinguished the legal effect of the facts in Ruiz from those in Tucker, commenting that "such reasoning processes are often exercises suffused with fine distinctions and seldom requited by certainty." Id. at 159. This Court noted that, in Tucker, the Supreme Court had cited Doss "as an example of a situation in which a police officer 'had justifiably stopped and interrogated the defendant because of the circumstances described in the record.'" Ruiz, 286 N.J. Super. at 161 (quoting Tucker, 136 N.J. at 170). But because, in Tucker, the only ostensible basis for pursuit was the defendant's inexplicable flight when he saw the police, the police had no basis to justify the seizure of defendant. Ibid.

As observed in the opinion itself, the situation in Tucker was singular. Of note was the absence of any other factor besides the flight; there was no knowledge of the defendant's criminal history, no suspicious conduct, nor an indication that it was a high crime area. Id. at 161-62. The Supreme Court noted in Tucker that, in light of the stipulated facts, the problem with the case was that the Court was "forced to deal in abstract concepts of seizure divorced from the reality of the streets." 136 N.J at 172-73. Confined by the limited

factual record, the Supreme Court suspected that, had all the circumstances been known, the police did not actually pursue Tucker for the sole reason that he ran away. Ibid.

Again, in J.B., this Court found a case more similar to Doss than to Tucker. 284 N.J. Super. 513. In that case, police were patrolling at night on bicycles, cycling to an intersection known for drug trafficking, when they received a dispatch about an anonymous citizen complaint of a large crowd selling drugs on that corner. 284 N.J. Super. at 515-16. On approach, one of the officers saw five individuals congregating there, recognizing among them a juvenile later identified as J.B. Id. at 516. J.B. fled when the police approached, and the officer followed him to a nearby porch, where the officer, using a flashlight, found J.B. in a crouched position on his knees. Ibid. Assuming J.B. was crouched down because he was hiding something, the officer lifted him up, finding drugs and a gun beneath him. Ibid.

This Court reversed the motion judge, who had suppressed the evidence against J.B. based on Tucker. Id. at 517. The Court distinguished Tucker based on the fact that in J.B. the police "were not on a routine patrol [but] were engaged in an organized police activity designed to eliminate loitering at night on street corners in high drug-trafficking areas." Id. at 518. J.B. was also distinguished by the fact that "the police were responding to a citizen

telephone complaint of alleged drug-trafficking at … the very next corner they intended to check as part of their planned activity that evening." Ibid. Thus, based on the totality of the circumstances, the Court found the case "more analogous to the facts in State v. Doss, 254 N.J.Super. 122," than the facts in Tucker. 284 N.J. Super. at 518–19.

The facts in this case also are unlike the singular, bare-bones facts of Tucker and are instead like the facts in Doss. Right after Little had conducted two drug sales, defendant and codefendant met with him and the trio walked eastward on Anna Street together. The police thus encountered defendant while he associated with someone in the process of selling drugs, an association that the Supreme Court in Tucker found "supported the officer's articulable suspicion to stop and interrogate defendant." 136 N.J. at 170 (discussing Doss, 254 N.J. Super. at 125).

Here, a surveillance operation was being conducted because local residents and business owners complained about crimes such as open-air drug distribution, assaults, shootings, and homicides. The previous two years had seen about 100 arrests for narcotics offenses, recovery of five to ten guns, approximately sixteen reported shootings and two homicides. One hundred complaints and upward of fifty service calls received from local citizens within a year caused this neighborhood to be a designated priority area of the city in

which to concentrate police presence. When the stop occurs while police are responding to problems in a high-crime area, and the person who flees is connected to those engaging in drug transactions, those facts will distinguish the case from Tucker, allowing the police to stop and interrogate the person. See, e.g., Ruiz, 286 N.J. Super. at 163; J.B., 284 N.J. Super. at 518; Doss, 254 N.J. Super. at 125.

The court evaluating the facts underlying the officer's suspicion weighs the officer's knowledge and experience and the rational inferences drawn from the facts, viewing them objectively in light of the officer's expertise. State v. Citarella, 154 N.J. at 279. The facts learned during this drug-surveillance operation are therefore seen in light of Officer Morales's nine years of service in the Elizabeth Police force, his extensive training in narcotics, and his familiarity with the modus operandi of local drug traffickers. Morales's experience included prolonged investigations in which he recovered sizeable amounts of narcotics, weapons and currency, and his participation in more than 100 arrests. His experience and training supported his suspicions of Little's companions that afternoon on Anna Street, and they are given weight by the Court when it evaluates the facts. See ibid.

Defendant argues that the only suspicious circumstance affecting him was "merely speaking to a suspected drug dealer[.]" (Db10). This fact was,

however, deemed sufficiently suspicious in Tucker. See 136 N.J. at 170 (discussing Doss, 254 N.J. Super. at 125). Even if purely innocent connotations could be ascribed to a person's actions, an officer can base a finding of reasonable suspicion on those actions as long as they reasonably could be consistent with guilt. Citarella, 154 N.J. at 279-80. After all, "'[i]t must be rare indeed that an officer observes behavior consistent only with guilt and incapable of innocent interpretation.'" Arthur, 149 N.J. at 11 (quoting United States v. Viegas, 639 F.2d 42, 45 (1st Cir.), cert. denied, 451 U.S. 970 (1981)). In this case, Officer Morales testified that drug dealers in this neighborhood conducted business using a system designed to allow "innocent connotations" to be ascribed to their actions; the system involved keeping the product in a stash location and separating the seller from the profits by passing off the cash to someone else working in the enterprise.

In support of his argument that there was no objective manifestation of his criminal involvement, defendant points to Officer Morales's response on cross-examination that "no facts linked them to criminality at that time[.]" (Db12). This was said on cross-examination, in response to defense counsel asking:

> What facts did you have in your possession, not supposition, not speculation, that Rahjan Pearson and Asher Conn were engaged in criminality simply

> because they were in physical proximity to Mr. Little? (1T59-8 to 11).

The question thus asks the officer if he caught the defendants in the act. But our law recognizes that it must be "rare indeed" for an officer to observe behavior consistent only with criminality, "incapable of innocent interpretation.'" Arthur, 149 N.J. at 11. As the officer indicated in his response, in the experience of a police expert there was indeed suspicious activity from Little and from those in his company. Officer Morales said:

> Like I described in the report, it is a multi-tiered system where not only individuals hide drugs in a stash location, hand off the drugs and the proceeds to other people, you know, there's time when we're doing surveillance that we can't maintain a constant visual for -- we could miss a split second.
>
> So is there a possibility that any of the detectives or officers want to stop and conduct a field inquiry of who Mr. Little was in the company with while he walked several blocks away from the location we observed in conducting hand-to-hand drug sales --
>
> (1T58-4 to 14).

The officer thereby explained that the police suspected that defendant could be a participant in this "multi-tiered system" of drug distribution. The officer's answer on cross-examination that "no facts linked them to criminality" should not be taken at face value, but should be read in context of all of the testimony,

including the testimony about local drug dealers' modus operandi. E.g., State v. Gamble, 218 N.J. 412, 431 (2014) (noting reasonable suspicion standard takes into account "'the totality of the circumstances—the whole picture'") (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)).

This Court does not rely on an officer's response, that he observed nothing blatantly illegal, for its legal finding of reasonable suspicion; rather the Court will objectively weigh all of the circumstances. In State v. Morrison, 322 N.J. Super. 147, 151 (App. Div. 1999), although recognizing that the police officer "did not testify as to a subjective belief that defendants were engaged in illegal activity" the Court concluded that "in determining whether a seizure is constitutional the proper inquiry is whether the conduct of the law enforcement officers in making an investigatory stop or detention is objectively reasonable." Id. at 155.

Reasonableness, the touchstone of constitutional police conduct, is assessed by examining the circumstances facing the officers, keeping in mind that they "must make split second decisions in a fluid situation." State v. Bard, 445 N.J. Super. 145, 157 (App. Div.), certif. denied, 227 N.J. 131 (2016). Fundamentally, "the totality of the circumstances − the whole picture − must be taken into account." State v. Davis, 104 N.J. 490, 501 (1986).

When an experienced officer is conducting drug surveillance in an area

inundated with narcotics where he has made numerous arrests and received numerous complaints which he is responsible to investigate, and when the defendants are congregating with someone selling drugs, and flee on seeing the police, the combined effect gives the officers a "reasonable and articulable suspicion that criminal activity was occurring" and "the right, if not the obligation, to approach defendants, and upon their flight, to chase them in order to make a brief investigatory stop." Morrison, 322 N.J. Super. at 154-56 (collecting cases). Although flight cannot be the only suspicious factor, it is a legitimate factor to consider along with the fact that the defendant is in a drug area and associating with those known to deal in drugs. Id. at 153.

Defendant, citing to a passage in State v. Rivera, 276 N.J. Super. 346, 352 (App. Div. 1994), which is in turn quoting a passage from Ybarra v. Illinois, 444 U.S. 85, 91 (1979), also argues that this investigatory stop involved an unmet particularity requirement. (Db13). This argument and its legal support are taken out of context. The issue being discussed in Rivera, after the Court acknowledged that "the police may have probable cause in the totality of circumstances to pursue and search a fleeing suspect," was whether there was probable cause to search those in the suspect's vicinity. 276 N.J. Super. at 351. Rivera involved the search of a defendant for no reason other than that the police had chased a juvenile suspect into a house, and the

defendant happened to be inside the house when the officers arrived. Id. at 352. Similarly, in Ybarra, the defendant was searched only because he was present in a tavern that was being searched under a warrant because the police had reason to believe that the bartender would have heroin for sale. 444 U.S. at 91.

In this case, defendant was pursued because of his own suspicious conduct. Defendant's assertion that nothing in the record indicates his involvement, and his claim that he only ran because he did not realize that the police officers were actually police officers, is belied by the credible testimony at the hearing and by the video footage, and it was properly rejected by the motion judge.

B. The Handgun, Cocaine and Cash Found on Defendant After He Obstructed and Resisted Arrest by Flight Are Admissible.

At the outset, defendant suffered no constitutional injury, as the police merely told him to stop when he fled from a valid investigatory detention intended to facilitate the arrest of Little. As the motion judge concluded, added to the other circumstances, the flight elevated the reasonable suspicion against defendant, giving the police probable cause to make an arrest and to search him incident to arrest:

> Again, I find that in the totality of the circumstances, everything taken together, the drugs, the drug

> transactions being observed, the high-crime area, conducting two drug transactions, the defendants walking with Mr. Little, the defendants fleeing the officers, defendant Conn having his gun dislodge from his person in less than -- I would say five seconds after, um, he took flight. All of this taken together and again looking at it from the eyes of the officers at the time, and looking at everything together, clearly in the opinion of the Court this amounts to probable cause sufficient to … pursue and detain and search the defendants.
>
> (2T81-15 to 82-2).

The trial court's conclusion conforms to the caselaw. A defendant's flight from pursuing police officers despite their shouted orders to halt, along with other circumstances of the case, can give the police reasonable cause to believe that a crime was committed or is being committed. See Doss, 254 N.J. Super. at 130. A reaction like flight often can provide the final piece of information needed to establish probable cause. Ibid. (citations omitted).

In this case, defendant and Conn were associating with Little, who had been seen selling drugs in a high-crime area known for narcotics sales. The police were conducting surveillance because of citizen complaints about the violent crime and drug trafficking afflicting the neighborhood. The police were aware that drug dealers operate in concert, with various members of the enterprise taking on specific roles, like handing off proceeds or drugs to a cohort. When Little's associates fled at the approach of the police, these

suspicious circumstances were elevated to probable cause for arrest and consequent search.

Moreover, in this situation "[a]n alternative ground is available on the basis of which [a] defendant's arrest and coincident search may also be sustained." Ibid. In Doss, the defendant's refusal to obey a detective's order to stop interfered with the attempt of police officers to enforce the law and thus the search recovering his loaded gun, heroin, cocaine, and cash was entirely lawful on that ground as well. See id. at 130-32.

As in Doss, here defendant's flight amounted to the offenses of obstructing the police investigation and attempting to prevent the police from effecting an arrest. See ibid.; N.J.S.A. 2C:29-1(a); N.J.S.A. 2C:29-2(a)(2). Our obstruction and resisting arrest statutes are designed to discourage a suspect's flight, because flight provokes altercations between suspects and police officers, to the endangerment of both groups as well as the public. See State v. Crawley, 187 N.J. 440, 451 (2006).

In this case, defendants fled across a well-trafficked city street, an act that was dangerous not only for the fleeing suspects, but for the officers in pursuit and for any drivers and pedestrians in that location, given the possibility that a driver could lose control of a car while trying to evade fleeing suspects or pursuing police officers. Defendant was not permitted

under our law to flee rather than submit to the authority of law enforcement. Even defendants who believe the stop is unlawful cannot seek their remedy on the street.

As our Supreme Court has explained, our State is committed to an "affirmative policy of submission" and an interpretation of the relevant law that "scrutinizes the defendant's conduct with a view toward preventing the transformation of arrests into melees and tragedy." State v. Brannon, 178 N.J. 500, 508-09 (2004), rev'g, 358 N.J. Super. 96 (App. Div. 2003). "[W]hen a police officer is acting in good faith and under color of his authority, a person must obey the officer's order to stop and may not take flight without violating N.J.S.A. 2C:29–1." State v. Crawley, 187 N.J. at 451–52.

Even though a judge may later determine that the stop was unsupported by reasonable and articulable suspicion, no one has a constitutional right to endanger lives by fleeing or resisting a stop or to use an improper stop to justify committing "the new and distinct offense of resisting arrest, eluding, escape, or obstruction, thus precipitating a dangerous chase that could have deadly consequences." Id. at 458-59. "Quite simply, in a society governed by the rule of law, constitutional decisionmaking cannot be left to a suspect in the street." Ibid.

> For practical and public-policy-based reasons, "constitutional decisionmaking cannot be left to a suspect in the street," even one who has done no wrong; a suspect "cannot be the judge of his own cause and take matters into his own hands and resist or take flight." 187 N.J. at 459. This reasoned approach encourages persons to avail themselves of judicial remedies, and signals that if a person peaceably submits to an unconstitutional stop the result will be suppression of the evidence seized from him.
>
> State v. Williams, 192 N.J. 1, 13 (2007) (quoting Crawley, 187 N.J. at 459-60).

"Because the officers had probable cause to arrest defendant for obstruction, ordinarily the handgun seized incident to a lawful arrest would be admissible in evidence." Williams, 192 N.J. at 13. Had the stop been unconstitutional, the Court would decide whether the "taint" from that stop would survive. Ibid. To make this evaluation, the Court will look to "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Id. at 15.

Temporal proximity, "the least determinative" factor," id. at 16, favors defendant. The third factor, the flagrancy and purpose of the supposed police misconduct, is not at all favorable to defendant, as the police cannot be said to be acting with any kind of bad faith. "Accordingly, their actions could hardly be described as flagrant misconduct." See ibid. In such a case, the factor of

intervening circumstances is the most important factor. Ibid. Given the need to deter a defendant from committing new crimes in response to good-faith police conduct, the intervening circumstance of defendant's failure to submit to police authority, his flight from the police, will completely purge the taint from the investigatory stop, allowing defendant's arrest and search based on the new offense. See id. at 16-18.

Defendant's argument fails in that the officers had the right to stop him so as to safely arrest Little, and to investigate open-air drug dealing occurring while the police watched. Defendant's flight elevated the level of suspicion to probable cause. Moreover, defendant had no right to flout a police order and, as he thereby committed new offenses, he was properly arrested and searched on that basis as well. The touchstone of the constitution is reasonableness, State v. Hathaway, 222 N.J. 453, 476 (2015), and the police conduct in this case was reasonable in every respect. The denial of the motion to suppress should be affirmed.

CONCLUSION

For the foregoing reasons, the State respectfully urges this Court to affirm defendant's conviction and sentence.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT

BY: /s/ Deborah Bartolomey
Deborah Bartolomey
Deputy Attorney General
BartolomeyD@njdcj.org

DEBORAH BARTOLOMEY
ATTORNEY NO. 030611989
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
APPELLATE BUREAU

OF COUNSEL AND ON THE BRIEF

DATED: JANUARY 6, 2025

PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Deputy Public Defender
31 Clinton Street, 9th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973.877.1200 · Fax 973.877.1239
The.Defenders@opd.nj.gov

JENNIFER N. SELLITTI
Public Defender

January 15, 2025

RACHEL A. NECKES
ID. NO. 381892021
Assistant Deputy
Public Defender

Of Counsel and
On the Letter-Brief

REPLY LETTER BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2905-23
INDICTMENT NO. 23-05-289

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Union County.
RAHJAN ROBINSON A/K/A RAHJAN PEARSON,	:	Sat Below:
Defendant-Appellant.	:	Hon. Daniel Roberts, J.S.C.

DEFENDANT IS CONFINED

Your Honors:

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

TABLE OF CONTENTS

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Rahjan Pearson respectfully refers this Court to the Procedural History and Statement of Facts set forth in his brief previously submitted in this matter. (Db 3-9)[1]

LEGAL ARGUMENT

Mr. Pearson relies on the legal arguments from his initial brief and adds the following:

POINT I

BECAUSE THE POLICE VIOLATED PEARSON'S CONSTITUTIONAL RIGHTS WHEN THEY STOPPED HIM WITHOUT INDIVIDUALIZED SUSPICION, THE FRUITS OF THE ILLEGAL STOP MUST BE SUPPRESSED.

In his opening brief, Pearson argued that officers violated his constitutional rights when they stopped him without reasonable, articulable suspicion that he was involved in criminal activity. The State's response relies on a critical factual error: that the police ordered Pearson to stop after he began to run, and that his flight is therefore a factor in the reasonable suspicion analysis. As a result, the State cites several cases in which the police stop a suspect after he or she flees from a police presence. See State v. Doss, 254 N.J.

[1] Db: Defendant-appellant's appellate brief
Pb: Plaintiff-respondent's appellate brief

Super. 122 (App Div. 1992); In re J.B., 284 N.J. Super. 513 (App. Div. 1995); State v. Ruiz, 286 N.J. Super. 155 (App. Div. 1995); State v. Morrison, 322 N.J. Super. 147 (App. Div. 1999). In each of those cases, the suspect's flight is a factor considered in the court's analysis. But, here, the record clearly establishes that the police stopped Pearson before he fled. (1T 30-20 to 25, 47-9 to 20; 2T 8-19 to 9-3, 19-25 to 20-4; Da 9 at 0:40-0:50, Da 10 at 0:41) Consequently, his flight cannot be a factor in the reasonable suspicion analysis and the State's legal reasoning—all of which flows from this mistake of fact—is inapposite.

Instead, as Pearson argued in his initial brief, the officers stopped him prior to his flight and without reasonable suspicion that he was involved in criminal activity—rather, they stopped him because of his proximity to the target of their investigation, Branden Little. (Db 10-14) The officers did not see Pearson exchange items with Little or conduct any transaction with him, they did not recognize Pearson from prior arrests or as someone previously involved in drug sales,[2] and they did not see Pearson approach Little's stash

[2] In several cases the State relied on, officers recognized suspects who were fleeing from police as those with previous drug offenses or arrests, or those known to have previously interacted with drug dealers. See Ruiz, 286 N.J. Super. at 157; Morrison, 322 N.J. Super. at 151, 154; see also Doss, 254 N.J. Super. at 126. (Pb 20-27, 30-31) Here, Pearson did not flee prior to being stopped and no officer recognized him.

location or interact with either individual who bought drugs from Little that afternoon. (1T 40-25 to 43-4; 2T 16-2 to 21, 34-11 to 25) The only reason that Pearson was stopped is because the officers were trying to arrest Little and, despite following Little throughout the day, they could not identify him among Pearson and Conn. (1T 43-2 to 4; 2T 24-6 to 14) Because there was no objectively reasonable basis to suspect Pearson of criminality, the police violated Pearson's constitutional rights when they stopped him.

No facts that the State points to in its brief create the requisite suspicion. The State argues that, in addition to Pearson's flight, there was reasonable suspicion to justify the stop because Pearson and Conn were "affiliating with someone conducting drug trafficking in a crime-ridden location, possibly taking part in an ongoing drug enterprise." (Pb 20; see Pb 22, 26-28) (emphasis added) But merely speaking with a suspected drug dealer in one's neighborhood cannot justify an investigatory stop—if it could, anyone who Little interacted with outside that afternoon could have been stopped by the police. Even the State's speculative argument that Pearson may have been a participant in what Officer Morales described at the beginning of his testimony as a "multi-tiered" drug distribution scheme falls flat, (Pb 28-30) as Morales testified later that Little appeared to be interacting with his customers and maintaining his stash by himself, without any assistance from Pearson or Conn

or any other individual. (1T 38-5 to 39-11) Moreover, Officer Arias confirmed that there was no surveillance showing that Pearson engaged in any criminal activity with Little.[3] (2T 34-16 to 21)

Because the seized evidence was the fruit of this illegal stop, it must be suppressed under the exclusionary rule. (Db 14-23) The State briefly argues that, even if the stop was illegal, the taint of that illegality was purged by defendant's flight from the stop. (Pb 36-37) In so doing, the State concedes that the temporal factor—the first factor in the three-factor attenuation test—favors Pearson. (Pb 36; see Db 15-16) But the State's analysis on factor two (the presence of intervening circumstances) and factor three (the flagrancy of the police conduct) is unpersuasive.

As to factor two, the State cites to State v. Williams (Williams I), 192 N.J. 1, 15 (2007), to argue that a defendant's flight from a police command

[3] The State also attempts to distinguish State v. Rivera, 276 N.J. Super. 346 (App. Div. 1994), where defendants were illegally searched because of their proximity to another suspicious person. The State argues that, unlike Rivera, Pearson was "pursued because of his own suspicious conduct." (Pb 31-32) But this is belied by the record, as the officers repeatedly testified that they did not suspect Pearson of criminality and that he was stopped so that the officers could identify Little, the target of their investigation, among the three men standing on the corner. (1T 43-2 to 4; 2T 24-6 to 14) As Rivera made clear, police action "is especially troublesome" when "conducted in the course of pursuing another." Id. at 352. In those circumstances, "care is required to assure that no person's legitimate expectations of privacy [are] sacrificed to the apparent exigencies of the moment." Ibid.

"will completely purge the taint from the investigatory stop." (Pb 37) But, as argued in Pearson's opening brief, this Court has made clear that not every act of obstruction will "automatically . . . [and] completely purge the taint from an unconstitutional investigatory stop." State v. Williams (Williams II), 410 N.J. Super. 549, 560 (App. Div. 2009) certif. denied 201 N.J. 440 (2010). Indeed, in Williams II, this Court distinguished between the defendant in Williams I, who committed obstruction by pushing an officer and fleeing his command, and the defendant in Williams II, who fled from an officer's command but did not "engage in any act of physical aggression." Id. at 563. The Court explained that the presence of danger created an intervening circumstance that dissipated the taint of illegality in Williams I, but that the absence of danger meant that the taint of illegality did not dissipate in Williams II. Id. at 563-64. Here, like in Williams II, Pearson did not engage in any act of physical aggression toward police and his brief flight did not create a danger to the officers. Accordingly, in this case, there was no intervening circumstance sufficient to purge the taint of the illegal stop. The State, however, failed to address Williams II in its response.

Similarly, as to factor three—the flagrancy of police conduct—the State only argued that the police conduct was not flagrant because it was not in "bad

faith."[4] (Pb 36) But regardless of whether the police acted in "bad faith," our Supreme Court emphasized in State v. Shaw that police conduct is particularly flagrant when officers randomly detain a person to determine whether he is the target of an investigation without individualized suspicion. 213 N.J. 398, 421 (2012). (Db 19-21) Here, the officers stopped Pearson solely to determine if he was Little, the target of their investigation, and not because of any individualized suspicion of criminality. (1T 41-18 to 43-4, 50-8 to 24; 2T 8-12 to 24, 19-25 to 20-5, 23-1 to 13, 24-6 to 7) For this reason, and for those discussed in Pearson's initial brief, this factor also weighs in favor of suppression. (Db 18-23) Once again, however, the State failed to address the flagrancy discussed in Shaw.

In sum, because each factor demonstrates that Pearson's flight did not purge the taint the initial illegal police stop, and because the State presents no compelling argument to the contrary, the fruits of the illegal stop must be suppressed and this matter must be remanded to afford Pearson the opportunity to withdraw his plea.

[4] Notably, bad faith and flagrancy are not synonymous—indeed, if the police were acting in bad faith, then a defendant who failed to obey police orders could not be convicted of obstruction at all, and there would be no need to determine if there was an intervening circumstance. See State v. Crawley, 187 N.J. 440, 460-61, 461 n.8 (2006) (stating that a prerequisite for a conviction of obstruction is "that the police officer act in good faith").

CONCLUSION

For the reasons set forth in Point I, the order denying Mr. Pearson's motion to suppress must be reversed and the case remanded to afford Mr. Pearson the opportunity to withdraw his guilty plea if he chooses to do so.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender

BY: /s/ Rachel A. Neckes
RACHEL A. NECKES
Assistant Deputy Public Defender
Attorney ID No. 381892021

Dated: January 15, 2025