SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2961-23
INDICTMENT NO. 21-09-1649-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Essex County.
JAYKIL A. RODWELL	:	
		Sat Below:
A/K/A JAYKIL RODWELL,	:	
		Hon. Siobhan A. Teare, J.S.C.
Defendant-Appellant.		

BRIEF AND APPENDIX 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
(973)877-1200

NADINE KRONIS
Assistant Deputy
Public Defender
Attorney ID: 404802022

Of Counsel and
On the Brief
Nadya.Kronis@opd.nj.gov
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DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

Almost exactly a year after George Floyd was murdered by police officers, three plainclothes police officers jumped out of two unmarked cars and accosted a group of Black men – defendant-appellant Jaykil Rodwell, Justin Rodwell, and Jasper Spivey – standing on the street near their home. An officer, who failed to turn on his body camera before the incident, immediately tried to grab a bag that Jaykil was holding. The police officers never identified themselves or announced their presence. They never told Jaykil that they wanted to investigate the contents of his bag or that he was under arrest. Instead, a melee ensued between the police officers and the men, with each group trying to pull Jaykil away from the other. At some point during the chaotic altercation, Jaykil fled the scene.

Following a bench trial, the only charge that Jaykil and his co-defendants were convicted of was obstruction. Jaykil's obstruction conviction must be vacated because the trial court based its decision on several clearly mistaken factual findings and the State failed to prove a necessary element of obstruction – that Jaykil acted with the purpose of obstructing an official police function – beyond a reasonable doubt. Had the court made proper factual findings and considered Jaykil's claim that he fled the scene in self-protection, it would have

found that Jaykil did not flee the scene with the purpose of obstructing an official function.

Furthermore, the defendants could not be convicted of obstruction because the police did not initiate this encounter in good faith. Instead, they arbitrarily decided to flout all constitutional rules, illegally and dangerously accosting a group of men who had done nothing more than stand near their home. Because the State did not, and cannot, prove several essential elements of obstruction – that Jaykil acted not in self-defense but with the purpose of obstructing an official function, and that the police acted in good faith – Jaykil's conviction must be vacated and a judgment of acquittal entered.

PROCEDURAL HISTORY

On September 3, 2021, an Essex County Grand Jury returned indictment 21-09-1649-I, charging defendant-appellant Jaykil Rodwell with: three counts of third-degree aggravated assault on a law enforcement officer, contrary to N.J.S.A. 2C:12-l(b)(5)(a) (Counts 1-3); fourth-degree obstruction, contrary to N.J.S.A. 2C:29-1 (Count 4); and third-degree resisting arrest by force, contrary to N.J.S.A. 2C:29-2(a)(3)(a) (Count 7). (Da 1-9)[1] The indictment also charged Branden Rodwell, Justin Rodwell, and Jasper Spivey in counts 1-4, while counts 5, 6, and 8 charged Branden, Justin, and Jasper each with one count of third-degree resisting arrest by force. (Da 1-9) On September 14, 2022, all the charges in the indictment were downgraded to disorderly persons offenses: three counts of simple assault, N.J.S.A. 2C:12-1(a) (Counts 1-3); obstruction, N.J.S.A. 2C:29-1 (count 4); and resisting arrest, N.J.S.A. 2C:29-2(a)(1) (Count 5). (Da 11)

On February 20, 2024, defense counsel for Jaykil Rodwell filed a notice that he would be raising the affirmative defense of self-defense. (Da 20-21) On

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[1] Da – Defendant-appellant's appendix
1T – April 28, 2022 – motion
2T – January 10, 2024 – conference
3T – March 20, 2024 (vol. 1) – trial
4T – March 20, 2024 (vol. 2) – trial
5T – March 21, 2024 – trial
6T – April 23, 2024 – sentence

March 20 and 21, 2024, a bench trial for all four co-defendants was held before the Honorable Siobhan A. Teare, J.S.C. (3T-5T) At the close of the State's case, defense counsel for Jaykil Rodwell made a motion for a judgement of acquittal on two counts of simple assault (Counts 1 and 3). (5T:2-11 to 22-13) The court reserved judgement on the motion, noting that it would need more time to "review the information" prior to making a decision. (5T:24-7 to 20)

On April 23, 2024, Judge Teare issued a written opinion, acquitting all defendants of simple assault and resisting arrest, but convicting them each of obstruction. (Da 10-19) That same day, Judge Teare sentenced all defendants to fines and fees only. (6T:6-18 to 7-20; see also 6T:13-3 to 19 (Branden); 6T:11-4 to 9 (Justin); 6T:16-4 to 8 (Jasper); Da 22-24) A notice of appeal was filed on May 28, 2024. (Da 25-27)

STATEMENT OF FACTS

On June 1, 2021, Newark Police Detectives Michael DaSilva and Christopher Serrano and Essex County Prosecutor's Office Lieutenant Paul Ranges went to 62-64 Cypress Street in Newark around 1:30 p.m. (Da 12; 3T:24-4 to 14, 26-20 to 23, 152-24 to 153-4) All three officers were in "civilian clothing" and unmarked cars; Serrano was driving with DaSilva as a passenger in a black unmarked "Ford Crown Vic," while Ranges was driving a black Dodge

Charger. (3T:29-21 to 22, 31-1, 31-4 to 6, 31-9 to 12, 153-9 to 15; 4T:206-20 to 22, 207-8, 208-7 to 10)

DaSilva testified that as part of his job in the Criminal Intelligence Section, he would "respond to various locations" that "have seen a spike in violent crimes." (3T:24-17 to 19) DaSilva would receive his assignments for where to go during roll call each shift. (3T:24-20 to 25-1, 152-19 to 23) DaSilva testified that they went to 62-64 Cypress Street because there had been two shootings "in the immediate area" in the preceding weeks – one on May 17 and another on May 24. (3T:26-25 to 27-5; Da 12) In contrast, Serrano testified that they were in the area because of complaints that narcotics were being bought and sold in the area. (3T:181-22 to 182-7)

According to DaSilva, when he and Serrano were about two car lengths away, he "saw a group of males," and his "attention was drawn to Jaykil." (3T:32-8 to 16, 333-13, 154-22 to 24, 155-2 to 5) Although DaSilva was wearing a body camera and knew he was supposed to turn his camera on, he did not do so when he first noticed Jaykil nor before he exited the car.[2] (3T:86-10 to 87-1, 105-10 to 12) Instead, DaSilva turned his camera on late, so there is video but

[2] Serrano was also wearing a body camera that he activated when the incident began, but his camera was destroyed, and no footage could be recovered. (3T: 158-16 to 25, 169-4 to 6, 174-21 to 24, 186-19 to 20; 4T:217-23 to 218-1, 4T:251-16 to 19, 251-22 to 252-3)

no audio of the beginning of the incident. (3T:93-13 to 21) As the trial court found, "[b]y not turning on his [body-worn camera] at the time he left his vehicle, critical evidence was lost. . . ." (Da 12)

Using nearly identical language, both DaSilva and Serrano testified that that Jaykil "took like a step back, and he became startled with our presence." (3T:33-14 to 15 (DaSilva); compare 3T:55-11 to 18 (Serrano testifying that Jaykil "noticed our police vehicle" and then "appeared startled" and "took a couple of steps back" while looking around.)) Both DaSilva and Serrano speculated that Jaykil was "looking around" because "he was trying to escape." (3T:34-11 to 13; compare 3T:155-16 to 18 (Serrano speculating that Jaykil was "looking for an avenue of escape")).

Although DaSilva's body camera was recording without audio and shows Jaykil as police approached the area, the footage does not show Jaykil looking around as DaSilva claimed he was doing. (3T:82-20 to 24; Da 28 at 1:25-1:38)[3] Moreover, although DaSilva believed that Jaykil was looking to "escape," DaSilva admitted on cross-examination that Jaykil did not walk away, did not run away, and did not go into his nearby home; instead, he stayed right where he was as the police approached in the unmarked cars. (3T:83-13 to 24)

[3] In the video, Jaykil has long dreadlocks and is wearing a white t-shirt (3T:77-1 to 6), Justin is wearing orange (3T:98-24 to 99-1), and Jasper is wearing a black and white t-shirt and blue jeans (3T:193-12 to 14).

DaSilva further testified that he noticed that Jaykil "had a shoulder bag" and "slowly move[d] the shoulder bag away from [his] vantage point."[4] (3T:34-14 to 16) Again, while the body camera footage shows Jaykil as the police approach, the video does not show the shoulder bag DaSilva claimed to find suspicious. (3T:100-17 to 23; see Da 28 at 1:25-1:45) Ranges testified that he had no idea why they stopped their cars where they did. (4T:222-14 to 17, 234-21 to 23)

In order "to further investigate" and "based on [Jaykil's] behavior when he saw [police] presence," DaSilva exited the unmarked car. (3T:34-18 to 20, 156-16 to 18, 157-11 to 13) DaSilva and Serrano testified that DaSilva announced himself as police "[a]s [he] was exiting the vehicle" and approached Jaykil from behind. (3T:36-19 to 22, 158-8 to 15) However, there is no independent proof of DaSilva's announcement because he failed to turn on his body-worn camera. (3T:114-23 to 115-9; Da 12)

DaSilva approached Jaykil from behind and immediately grabbed his shoulder bag. (Da 12; 3T:107-12 to 14; 4T:235-21 to 24; Da 28 at 1:35-1:49) Before grabbing the bag, DaSilva did not ask Jaykil if he could speak with him, nor did he ask Jaykil if he could see his bag. (3T:84-10 to 23) DaSilva testified

[4] Throughout the proceedings, the bag is referred to as the "shoulder bag" and the "fanny pack" interchangeably. (See e.g. 3T:84-10 to 85-3; Da 12)

that he intentionally did not ask Jaykil if he could search his bag in order to introduce "a little element of surprise." (3T:140-23 to 141-5) When DaSilva grabbed the bag from Jaykil, he also grabbed Jaykil's left arm "to place him under arrest." (3T:85-2 to 6, 159-1 to 5) However, DaSilva did not say anything to Jaykil or announce that he was under arrest. (3T:85-10 to 17) In fact, there is nothing on the body camera footage that reflects any of the police officers announcing to any of the men that they were under arrest at any point. (3T:134-25 to 137-2; 4T:223-12 to 14)

DaSilva testified that "when [he] grabbed the shoulder bag," he "felt the presence of a firearm inside the shoulder bag." (3T:37-11 to 14) However, aside from DaSilva's testimony, there is no evidence that the shoulder bag contained a gun. Although Serrano and Ranges testified that DaSilva announced the presence of a gun, DaSilva admitted on cross-examination that the body camera footage does not reflect him announcing that he felt a gun. (3T:115-10 to 15, 158-8 to 15; 4T:210-25 to 211-5; see Da 28) Moreover, while DaSilva testified at trial that there was a gun in Jaykil's shoulder bag, in the body camera footage following the incident, DaSilva can be heard saying that "the guy in the orange" – Justin – had the gun, not Jaykil. (3T:117-20 to 24; Da 28 at 4:00-4:10) And the shoulder bag was not recovered, as Jasper Spivey removed the bag and left the scene. (3T:60-9 to 17)

DaSilva testified that after he grabbed Jaykil's bag, Jaykil "started to . . . run towards Detective Serrano and Lieutenant Ranges." (3T:38-13 to 18) However, the video footage does not show Jaykil running. (Da 28 at 1:37 to 2:04) DaSilva later admitted on cross-examination that Jaykil did not run, but rather "tri[ed] to flee" and brought Serrano – who had grabbed Jaykil – "over to the sidewalk" with "momentum." (3T:94-10 to 96-7) compare 3T:161-20 to 24 (Serrano testifying that he and Ranges were attempting to arrest Jaykil when their "momentum … brought [them] to the metal fence" on the sidewalk.) DaSilva testified that after Serrano and Ranges both got ahold of Jaykil, he had no further interaction with Jaykil. (3T:96-15 to 18) At this point, DaSilva was in possession of the fanny pack. (3T:44-23 to 45-9) Around the same time, Justin pushed DaSilva towards a van that was parked nearby with its sliding door open. (Da 12; 3T:44-23 to 45-1, 47-11 to 18, 161-17 to 162-2; 4T:213-24 to 214-5) DaSilva finally turned on his body camera as he was pushed. (3T:93-13 to 21) Then, as the trial court found, "a melee ensued." (Da 12)

During this "commotion," DaSilva secured the shoulder bag around his neck, while Serrano and Ranges struggled with Jaykil, Justin, and Jasper – who were pulling Jaykil away from the officers. (Da 12; 3T:48-1 to 2; 51-4 to 8) At this point, Jasper came over to DaSilva and "wrestl[ed]" the bag away from him. (Da 12; 3T:51-13 to 16, 52-5 to 7, 52-24 to 53-4; 4T:214-15 to 215-2) According

to DaSilva, Jasper punched him in the chest, causing his body camera to fall off. (3T:53-16 to 17) DaSilva and Jasper fell to the ground, and DaSilva testified that he could feel a handgun in the bag as it was pressed against his chest. (Da 12; 3T:54-11 to 20, 164-8 to 13) However, as with the first time DaSilva testified that he could feel a gun in the bag, there is no evidence to corroborate this assertion. DaSilva testified that Jasper put him in a "choke hold," so Serrano punched Jasper in the face, causing him to let go. (3T:55-7 to 23, 165-18 to 22)

Serrano testified that right after he punched Jasper, Branden "tackled" him and he fell to the ground.[5] (3T:166-15 to 17, 167-9 to 11) According to Serrano, while they were on the ground, Jasper grabbed the shoulder bag, Serrano tried to take it from him, and then "was forced to let him go" after what "felt like a kick in the head." (3T:167-11 to 18) According to DaSilva, Jasper "just took off," running away with the shoulder bag. (3T:56-1 to 7) Ranges testified that he was still grabbing onto Jaykil when Jasper ran across the street. (4T:215-11 to 23) Ranges then let go of Jaykil to help Serrano by lifting Branden off of him, putting Branden in a "bear hug." (4T:215-18 to 23, 216-3 to 7) Ranges testified

[5] Branden is wearing a white tank top and red pants on the body camera footage. Serrano clarified on cross-examination that Branden was not there when the police first arrived. (3T:183-2 to 12) Instead, the first time Branden got involved was immediately after Serrano punched Jasper, Branden's brother, in the face. (3T:183-20 to 184-2, 184-3 to 7)

that Jaykil got away at some point after Ranges let go of him. (4T:223-23 to 224-3)

After Jasper left, DaSilva noticed that his body camera had fallen off, so he retrieved it. (3T:60-9 to 17) DaSilva testified that Justin then approached him and was "[r]esisting [his] control" and "trying to push [DaSilva] off." (3T:60-22 to 61-3, 61-7 to 13) DaSilva testified that Justin "struck [his] chest again," causing his body camera to fall off again. (3T:64-2 to 3) Serrano testified that he then went to help Ranges arrest Branden. (3T:167-21 to 168-3, 185-20 to 24)

Newark Police Detective Darren Sinclair and his partner, Officer Gabriel Gonzalez, arrived around 1:45 p.m., ordered Branden to put his hands behind his back, and when he didn't, ordered that the officers "take him to the ground." (5T:6-17, 7-4 to 6, 7-15 to 22, 9-5 to 9, 9-11) Sinclair was wearing a body camera that day but it "became dislodged," and no footage was introduced into evidence. (5T:11-5 to 13) The only body camera footage that exists, from DaSilva's body camera, shows Branden repeatedly asking police to handcuff him in the front and then to put him into a police car. (Da 28 at 5:50-6:30; 4T:226-18 to 22, 228-9 to 11) Instead, four or five police officers tackle him to the ground and pull his arms behind his back before handcuffing him. (Da 28 at 6:30-7:38)

In addition to this evidence, the State introduced a video posted by Jaykil and Jasper to Jasper's Instagram account. (5T:16-18 to 23) In the video, Jaykil

and Jasper explain that they "had an altercation yesterday" that "got very violent from the police officers." (5T:18-10 to 13) The video specifies that the police "just came and start yoking people up." Jaykil and Jasper explain that the shoulder bag contained rent money for their mother, that the officers tried to take it, and that they "didn't know what was going on." (5T:18-13 to 21)

After hearing this evidence, the trial court acquitted Jaykil of the simple assault charges because it was "clear from the body camera footage by Det. DaSilva that, Jaykil Rodwell was being pushed and pulled into and away from officers through no action of his own but as a result of the behavior of his co-defendants." (Da 17) The court acquitted Jaykil of resisting arrest "for the same reasons," finding that "the interference of the other co-defendants prevented … [the] officers from having an opportunity to place the defendant under arrest" and that "[b]ased on the chaos that ensued, defendant couldn't comply even if he wanted to because he was being pulled in multiple ways from both officers and co-defendants." (Da 17) The court further noted that the police officers "never stated explicitly that … Jaykil Rodwell was under arrest," but that "the totality of the circumstances presented indicate that officers were in fact attempting to place [Jaykil] under arrest." (Da 17)

The court found Jaykil guilty of obstruction because it found that DaSilva "clearly expressed" that Jaykil and "the fanny pack that he was in possession

of" were "the main focus of his investigation," and that Jaykil "prevented the officers from performing their legal duties by means of interfering by throwing the fanny pack, followed by flight with the object in the midst of an ongoing investigation by law enforcement." (Da 17-18)

LEGAL ARGUMENT

POINT I

THE OBSTRUCTION CONVICTION MUST BE VACATED AND A JUDGMENT OF ACQUITTAL ENTERED BECAUSE JAYKIL DID NOT FLEE THE SCENE WITH THE PURPOSE OF OBSTRUCTING AN OFFICIAL FUCTION. (3T:19-1 TO 8; 5T:47-4 TO 6, 48-4 TO 7, 54-15 TO 17, 55-6 TO 23, 56-24 TO 58-3; Da 17-18)[6]

It is axiomatic that to sustain a guilty verdict, the State must prove each element of a charged offense beyond a reasonable doubt. In re Winship, 397 U.S. 361, 362 (1970); State v. Ingenito, 87 N.J. 204, 213-15 (1981); State v. Vick, 117 N.J. 288, 293 (1989). Holding the State to this burden "is essential to the

[6] Defense counsel argued that the court should acquit Jaykil of obstruction because Jaykil did not flee the scene with the purpose of obstructing an official function, but rather fled to protect himself. (5T:47-4 to 6, 48-4 to 7, 54-15 to 17, 55-6 to 23, 56-24 to 58-3) As this was a bench trial rather than a jury trial, counsel's closing arguments asking the judge to acquit should be viewed as the equivalent of a motion for a judgment of acquittal. Alternatively, the court's failure to acquit defendant of obstruction of justice should be reviewed by this Court under the plain error standard because convicting defendant of an offense that the State has not proven beyond a reasonable doubt is a miscarriage of justice that should be addressed by this Court. R. 2:10-2.

protection of a defendant's basic constitutional rights." State v. Thomas, 132 N.J. 247, 253 (1993). When the State fails to carry out its constitutionally mandated burden, a court must grant a motion for a judgment of acquittal. See R. 3:18-1. The standard for assessing whether a judgment of acquittal must be entered is "whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all favorable inferences which reasonably could be drawn there from, a reasonable jury could find guilt of the charge beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967). Here, a judgment of acquittal must be entered because the State failed to prove that Jaykil fled the scene with the purpose of obstructing an official function. U.S. Const. amends. V, XIV, N.J. Const. art. I, ¶¶ 1, 10; Winship, 397 U.S. at 362-64.

Had the trial court made factual findings based on credible evidence in the record and had it considered Jaykil's claim that he fled the scene of the melee in self-protection, it would have acquitted Jaykil of obstruction. A person commits obstruction if "he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act." N.J.S.A. 2C:29-1(a).

The trial court convicted Jaykil of obstruction based on its findings that sometime during the altercation between the police officers and Jaykil's co-defendants, Jaykil threw the fanny pack to Jasper and Justin, and then fled the scene together with Jasper and the fanny pack, thereby interfering with the police officers' investigation and their efforts to arrest Jaykil. (Da 17-18) However, these findings are completely unsupported by the body camera footage. And they are plainly contradicted by the testimony of the police officer witnesses – all of whom testified that Jasper got the fanny pack directly from DaSilva – and that he ran away immediately thereafter. (3T:56-1 to 7; 4T:223-23 to 224-3) Had the trial court not made these mistaken factual findings, it would have acquitted Jaykil of obstruction for the simple reason that without these findings, there is nothing in the record to support a necessary element of the offense – that Jaykil acted with the purpose of obstructing an official function.

Furthermore, the court erred in failing to address Jaykil's assertion that he fled the scene of the melee to protect himself – not to obstruct the performance of official police duties. The evidence presented at trial strongly suggested that it was not evident to Jaykil at the time of the incident that the officers were attempting to arrest him or that they were otherwise engaged in the performance of any official duties when they emerged from unmarked cars in civilian clothes,

one of them immediately grabbed Jaykil's bag and arm, and a melee erupted between Jaykil's co-defendants and the officers. Had the trial court expressly considered Jaykil's claim that he had fled in self-protection, it would have acquitted him of obstruction.

The trial court's clearly mistaken factual findings, its failure to consider Jaykil's claim that he fled in self-protection, and its erroneous determination that the State had proved that Jaykil fled with the purpose of obstructing an official function beyond a reasonable doubt require the reversal of Jaykil's obstruction conviction and the entry of a judgement of acquittal. U.S. Const. amends. V, XIV, N.J. Const. art. I, ¶¶ 1, 10.

A. The court's finding that Jaykil interfered with the police investigation by throwing the fanny pack to his co-defendants and then fleeing together with Jasper and the fanny pack was clearly mistaken.

The trial court made several critical factual findings that were both clearly mistaken and central to its determination that Jaykil had fled the scene for the purpose of obstructing the police officers' investigation and to prevent himself from being arrested. The court's findings that the footage from DaSilva's body camera shows Jaykil throwing the fanny pack to Jasper or Justin, and that Ranges later saw Jaykil fleeing the scene together with Jasper and the fanny pack are both completely unsupported by the body camera footage, as well as by any other evidence in the record. (Da 17-18) Based on these clearly mistaken

factual findings, the court convicted Jaykil of obstruction, noting that he "prevent[ed] officers from performing their legal duties by means of interfering by throwing the fanny pack" and then fleeing with it. (Da 18) However, in the absence of the court's findings that Jaykil threw the fanny pack to anyone or that he fled with it, there is simply no evidence on this record that Jaykil fled with the purpose of obstructing an official function. Had the court made accurate factual findings, it would have acquitted Jaykil of obstruction.

In criminal cases tried without a jury, the trial court must "state clearly its factual findings and correlate them with the relevant legal conclusions." State v. Locurto, 157 N.J. 463, 470 (1999). While a trial court's factual findings are entitled to deference from appellate courts, that "deference ends when a trial court's factual findings are not supported by sufficient credible evidence in the record." State v. S.S., 229 N.J. 360, 381 (2017) (citing State v. Gamble, 218 N.J. 412, 424 (2014)). "[A] trial court's factual conclusions reached by drawing permissible inferences cannot be clearly mistaken." Id. at 380.

Here, the court was clearly mistaken in finding that DaSilva's body camera footage shows Jaykil "throwing the fanny pack to Justin Rodwell and Jasper Spivey as officers engage in a melee with the co-defendants." (Da 17) DaSilva testified that the last interaction he had with Jaykil was when he grabbed him by the arm – after that, Ranges and Serrano got ahold of Jaykil, and Jasper

and Justin began trying to pull their brother away. (3T:96-15 to 18) The last time that Jaykil appears on the body camera footage is when he is up against the metal fence, being pulled in different directions by Serrano and Ranges on one side, and his co-defendants on the other. (Da 12, 17, 28 at 2:05 to 3:01; 3T:96-15 to 18) Then, the body camera footage shows Jasper coming over to DaSilva – who has the fanny pack. (Da 28 at 2:28 to 2:33; 3T:52-3 to 25) DaSilva's body camera falls to the ground at the beginning of the altercation between Jasper and DaSilva – at which point, there is no more footage of the struggle between Jasper and DaSilva. (Da 28 at 2:33 to 3:01; 3T:53-16 to 17) Jaykil barely appears on the body camera footage again after the body camera falls to the ground.

Contrary to the court's findings, DaSilva's body camera footage does not show Jaykil throwing the fanny pack to Jasper or Justin.[7] Instead, the testimony of DaSilva and Serrano confirms that Jasper took the fanny pack directly from DaSilva during their struggle on the ground and that Jasper fled the scene immediately after that. DaSilva testified that after he and Jasper fell to the ground, Jasper put him in a chokehold, and then "took off running" with the

[7] The only time that Jaykil can be seen throwing anything to anyone in the body camera video is after DaSilva has already taken the fanny pack from Jaykil. After Serrano and Ranges grab Jaykil, the video shows Jaykil throwing what appears to be a keyring in the direction of his co-defendants. (Da 28 at 2:03 to 2:07) However, the court made no findings regarding this portion of the video, and at no point does the video depict Jaykil throwing the fanny pack.

fanny pack, leaving DaSilva holding the detached shoulder strap of the fanny pack. (3T:55-24 to 56-7); (see 3T:167-11 to 18) (Serrano's testimony that Jasper grabbed the fanny pack from DaSilva and ran away).

The court additionally found that "Jaykil Rodwell was seen by Lieutenant Ranges fleeing the scene with Jasper Spivey with the fanny pack." (Da 17) Likewise, this finding is entirely unsupported by the record. Ranges never testified that he saw Jaykil running away together with Jasper and the fanny pack. Instead, Ranges testified that he was still "being pulled in different directions by Serrano and [Jaykil]" when he saw Jasper running across the street and into a backyard. (5T:215-11 to 23) He testified that he believed that he "was still grabbing onto [Jaykil]" when Jasper fled. (4T:215-21 to 23) Ranges further stated that he let go of Jaykil to assist Ofc. Serrano, who was engaged in an altercation with Branden, and that Jaykil got away at some point after Ranges let go of him. (4T:223-18 to 224-3)

Thus, the court's factual findings – that DaSilva's body camera footage shows Jaykil throwing the fanny pack to Jasper and Justin and that Ranges saw Jaykil fleeing together with Jasper and the fanny pack – are as clearly mistaken as they are critical to the court's guilty verdict. Without these mistaken factual findings, the only evidence that was presented at trial regarding Jaykil's flight is that, at some point, he broke away from the melee and fled. This is wholly

inadequate to demonstrate that Jaykil fled with the purpose of obstructing an official function. Thus, Jaykil's obstruction conviction must be reversed and a judgment of acquittal entered.

B. The trial court erred in convicting Jaykil of obstruction where it failed to expressly consider that he ran away for the purpose of protecting himself instead of with the unlawful purpose of obstructing an official function.

To sustain a conviction, the State must prove each element of a charged offense beyond a reasonable doubt. Winship, 397 U.S. at 362. Here, the State failed to prove beyond a reasonable doubt that Jaykil fled the scene of the melee with the purpose of obstructing an official police function. At trial, Jaykil asserted that he had instead fled for the purpose of self-protection – negating the purpose element of obstruction (Da 20-21; 5T:48-4 to 7, 56-24 to 58-3) Had the court properly considered Jaykil's claim, it would have found that there was substantial evidence that Jaykil acted in self-protection by fleeing from plainclothes police officers who jumped out of unmarked cars and immediately grabbed him, without ever indicating that he or any of his co-defendants were under arrest. The trial court erred in failing to expressly consider, and find, that Jaykil ran away with the purpose protect himself instead of with an unlawful purpose to obstruct. See Rule 1:7-4(a); Locurto, 157 N.J. at 470 (citing Curtis v. Finneran, 83 N.J. 563, 570 (1980)) (requiring trial court to "clearly state its

factual findings and correlate them with the relevant legal conclusions" during a bench trial).

Our State's statutory and case law establish that a defendant may not resist or flee from a police officer who is lawfully carrying out his official duties – even if the officer acts unconstitutionally. See State v. Crawley, 187 N.J. 440, 444 (2006); State v. Mulvihill, 57 N.J. 151, 158-59 (1970). A defendant may, however, justifiably act in self-protection during an altercation with a police officer if, based on the circumstances, he reasonably believes that the officer is not acting under color of his authority, but instead is engaging in a private altercation with the defendant. Mulvihill, 57 N.J. at 158-59; State v. Montague, 55 N.J. 387, 403-06 (1970); N.J.S.A. 2C:3-4(b)(1)(a).

In State v. Crawley, the Court held that the defendant violated the obstruction statute by fleeing from police officers who were "lawfully performing an official function" under color of their authority as police officers by attempting to conduct an investigatory stop. 187 N.J. at 443-44. The officers testified at trial that they pulled up alongside the defendant in a patrol car, announced themselves as police, and told the defendant that they wanted to speak with him – in response to which he immediately fled. Id. at 444-45. The Court found that there was "substantial credible evidence in the record" that the officers "ordered defendant to stop for questioning and that defendant clearly

understood that command" when he fled. Id. at 450. Thus, the Court held that regardless of the constitutionality of the investigatory stop, the defendant was required to obey the officer's order to stop, which was made in good faith and "under color of [the officer's] authority." Id. at 451-52.

In reaching this conclusion, the Crawley Court relied on what it termed "sister statutes" to the obstruction statute, specifically focusing on the offense of resisting arrest, N.J.S.A. 2C:29-2, which "require[s] that the defendant submit to an illegal detention and that he take his challenge to court." Id. at 455. The Court noted that under the resisting arrest statute, "a person has no right to resist arrest by flight or any other means, even if the arrest constitutes an unreasonable seizure under the constitution," provided that the officer "was acting under color of his official authority and … [the] officer announces his intention to arrest prior to the resistance." Id. at 453 (citing Mulvihill, 57 N.J. at 155-56); see also State v. Reece, 222 N.J. 154, 173 (2015) (affirming defendant's obstruction conviction and holding that his refusal to submit to police officers was not justifiable where he had "good reason to believe" that they were "authorized police officers engaged in the performance of [their] duties.")

In Mulvihill, our Supreme Court recognized that general self-defense principles apply to altercations between civilians and police officers when the officer is not acting under color of his official authority. Mulvihill, 57 N.J. at

158-59. The Court explained that a defendant is justified in acting in self-protection during an altercation with a police officer, even a uniformed police officer, if the defendant reasonably believed that the officer was not attempting to effect an arrest or was otherwise acting outside the scope of his official duties under the circumstances. Ibid. In such circumstances, the Court held that "the fracas between the two men [would take] on the character of a combat between two private individuals." Ibid. Thus, the Mulvihill Court found that the trial court erred in determining that self-defense was not a defense available to the defendant solely because he had used force against a uniformed officer who was attempting to arrest him. Id. at 155. The Court held that the trial court "erred in eliminating self-defense from the case as a matter of law" where there was evidence that the defendant believed that the officer was not arresting him, but acting in an essentially private capacity, outside the scope of his official duty. Id. at 158-59.

Similarly, in State v. Montague, our Supreme Court reversed the defendant's conviction for assault on a police officer due to the trial court's failure to properly instruct the jury on the defendant's right to intervene in defense of his niece where there was evidence presented at trial that the defendant reasonably believed that the officer was beating his niece in response to her verbal taunts, rather than attempting to subdue her unlawful resistance to

arrest. 55 N.J. at 390-93, 404-06. The Court held that the trial court erroneously instructed the jury that the defendant "could not prevail on his asserted defense that he had reasonably intervened to protect his niece if, regardless of the appearances and his beliefs," the officer had in fact arrested his niece and she actually resisted arrest. Id. at 403-404. The Supreme Court explained that the fact that the officer was in uniform did not in itself "obviate the possibility that the officer was … engaged in a private altercation rather than in the bona fide performance of his police duties," and thus the trial court was required to instruct the jury on self-defense. Id. at 405-06.

In response to the Supreme Court's holdings in Mulvihill and Montague, the legislature amended subsection the self-defense statute, N.J.S.A 2C:3-4, by clarifying that a defendant is not justified in resisting arrest so long as a police officer uses lawful force and acts in the performance of his duties. N.J.S.A. 2C:3-4(b)(1)(a); see also N.J. CRIMINAL LAW REVISION COMMISSION, I FINAL REPORT: SECTION 2C:3-4, at 26-27 (1971). The 1971 New Jersey Criminal Law Revision Commission Commentary (hereafter 1971 Commentary), explicitly states that a police officer does not act "in the performance of his duties" within the meaning of Mulvihill and Montague when he engages in the equivalent of a private altercation or uses excessive force, and

that a defendant's resistance in this situation may be proper. The 1971 Commentary notes:

> The Montague case holds that resistance is proper if the defendant reasonably believes the officer not to be acting in good faith in the performance of his duties, but instead to be using excessive force or engaged in a private altercation … By adding the words "in the performance of his duties," we have incorporated this holding into the Code. (Emphasis added)
>
> N.J. CRIMINAL LAW REVISION COMMISSION, II FINAL REPORT: COMMENTARY 3-4, at 104 (1971) (citing Montague, 55 N.J. at 405; State v. Mulvihill, 105 N.J. Super. 458 (App. Div. 1969) certif. granted, 54 N.J. 560 (1969)).

This animating principle behind our Supreme Court's decisions in Mulvihill and Montague applies with equal strength to the charge of obstruction. See Crawley, 187 N.J. at 455-56 (noting that obstruction and resisting arrest are "sister statutes" and the same public policy concerns apply equally to them). Indeed, the Model Jury Instruction for obstruction states that the defendant cannot be found guilty of obstruction if "he/she and a public servant engaged in a private altercation that happens to occur at a time when the victim is engaged in official duties." Model Jury Charges (Criminal), "Obstructing Administration of Law or Other Governmental Function" (approved Oct. 23, 2000). Reading Mulvihill and Montague harmoniously with Crawley, it is clear that a finder of fact must consider whether a defendant charged with obstruction reasonably acted in self-protection during an encounter with a police officer where there is

evidence that it appeared to the defendant that the police officer was engaging in a private altercation outside the scope of his official duties.

Here, Jaykil contended through counsel that he fled the scene in self-protection, and not for the purpose of obstructing or interfering with a police investigation or arrest. (5T:48-4 to 7, 56-24 to 58-3) Substantial evidence was presented at trial that at the time of the incident, it was not apparent to Jaykil that the police officers were acting in their official capacity or attempting to arrest him. The trial court did not consider Jaykil's assertion that he fled in self-protection – a claim that could negate the purpose element of the charged offense – in its decision. Instead, the court found only that "although [police] officers never stated explicitly that defendant, Jaykil Rodwell … was under arrest, the totality of the circumstances presented indicate that the officers were in fact attempting to place the defendant under arrest." (Da 17) The court also found that while there is no evidence on the record that the police officers ever "identified themselves and announced their presence… it is hard for this [c]ourt to believe that defendants did not know that these gentlemen were law enforcement as they exited their unmarked car." (Da 12)

However, the question before the court was not whether Jaykil realized that the police officers were in fact police officers at some point during the altercation. Nor was the relevant question whether the police officers were in

fact attempting to arrest Jaykil under "a totality of the circumstances." (Da 12) Instead, as in Mulvihill and Montague, the question for the finder of fact was whether it may have reasonably appeared to Jaykil that the officers were not attempting to arrest or investigate him, but instead acting outside the scope of their official roles. See Mulvihill, 57 N.J. at 158-59; Montague, 55 N.J. at 405-06. If the answer to that question was yes, then the State did not carry its burden of proving beyond a reasonable doubt that Jaykil fled the scene to obstruct an official function, rather than to protect himself.

In closing, the State argued that despite the officers' failure to announce that they were arresting anyone, Jaykil and his brothers should have known that they were "being placed under arrest" because DaSilva told them to stop several times. (5T:78-5 to 79-5) However, unlike the police officers in Crawley, who were in marked cars and uniforms, immediately ordered the defendant to stop, and told him that they needed to speak with him at the beginning of the encounter, here, the officers emerged from unmarked cars in plainclothes, did not announce themselves as police officers based on the body camera footage, and never announced that Jaykil or any of his co-defendants were being investigated or arrested. (Da 12; 3T:114-23 to 115-9); See Crawley, 187 N.J. at 444-45. Unlike the officers in Crawley, DaSilva did not tell anyone to stop until well after he had grabbed Jaykil, a melee had already broken out, and Jaykil had

been pushed against a metal fence, where he was being pulled in different directions by the police officers and his brothers. (Da 28 at 2:04 to 2:31); (See Da 17) (court's finding that Jaykil would have been unable to comply with any arrest by the police "even if he wanted to" because he was being pushed and pulled in "multiple directions" by the police and his codefendants). Thus, Jaykil likely did not know that he was being arrested under these circumstances and fled to protect himself.

Unlike in Crawley, here, the State also failed to establish that Jaykil understood DaSilva's eventual command to stop as an effort to place him under arrest or conduct an investigation. See Crawley, 187 N.J. at 450; see also Mulvihill, 57 N.J. at 158-59 (holding uniformed police officer's statement to defendant that he "should" arrest him during physical alteration neither constituted arrest, nor made it clear to the defendant that he was being arrested). In the Instagram video made by Jaykil and Jasper shortly after the incident, the brothers explained that they "didn't know what was going on" when DaSilva grabbed Jaykil and his fanny pack, or during the chaos that ensued. (5T:18-13 to 21) By failing to demonstrate that Jaykil knew that he was being arrested or that the police officers were performing their official duties as such, the State failed to prove beyond a reasonable doubt that Jaykil fled with the purpose of

obstructing an official function. Therefore, Jaykil's obstruction conviction must be vacated and a judgment of acquittal entered.

POINT II

THE OBSTRUCTION CONVICTION MUST BE VACATED AND A JUDGMENT OF ACQUITTAL ENTERED BECAUSE THE POLICE DID NOT ACT IN GOOD FAITH WHEN THEY WHOLLY ARBITRARILY PHYSICALLY ACCOSTED A GROUP OF MEN STANDING OUTSIDE THEIR HOME. (3T:17-13 to 18-25; 5T:49-17 to 54-20, 58-4 to 19)[8]

It is essential to the protection of a defendant's basic constitutional rights to hold the state to its burden of proving each element of a charged offense beyond a reasonable doubt. See supra at 13-14 (citing Winship, 397 U.S at 362; Thomas, 132 N.J. at 253). Here, the State failed to prove that the police were "lawfully performing an official function," N.J.S.A. 2C:29-1(a), such that a judgment of acquittal must be entered. U.S. Const. amends. V, XIV, N.J. Const. art. I, ¶¶ 1, 10; Winship, 397 U.S. at 362-64.

As discussed in Point I, supra, a person commits obstruction if "he purposely obstructs, impairs or perverts the administration of law or other

[8] Defense counsel argued in opening and closing that Jaykil should be acquitted of obstruction because the police did not act in good faith. (3T:17-13 to 18-25; 5T:49-17 to 54-20, 58-4 to 19) As this was a bench trial rather than a jury trial, counsel's closing arguments asking the judge to acquit should be viewed as the equivalent of a motion for a judgment of acquittal.

governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act." N.J.S.A. 2C:29-1(a) (emphasis added). To establish the that a public servant was "[l]awfully performing an official function" the State must prove that a police officer was "acting in objective good faith, under color of law in the execution of his duties." Crawley, 187 N.J. at 460-61. The Supreme Court explained that "[a]mong other things," this objective good faith requirement means that an officer "who reasonably relies on information from headquarters in responding to an emergency or public safety threat may be said to be acting in good faith under the statute." Id. at 461, n.8 (emphasis in original). In contrast, "a police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith." Ibid.

Here, as argued by defense counsel, the State did not, and could not, prove this "prerequisite for a conviction" beyond a reasonable doubt. Ibid.; (3T:17-13 to 18-25; 5T:58-4 to 19) The police in this case wholly arbitrarily accosted Jaykil, Justin, and Jasper when they were doing nothing wrong or suspicious. DaSilva, without turning on his body camera as required, immediately grabbed Jaykil's bag from him, without any valid cause. The police's conduct in this case was flagrantly unconstitutional – so far beyond what our law permits that it was

not in good faith. The police's actions, though arbitrary and illegal, were also strikingly similar to what the Department of Justice described in a 2014 Report as the Newark Police Department's pattern or practice of unconstitutional stops and arrests. United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014) ("DOJ Report"). Repeating the exact same type of illegal actions the Department of Justice warned the Newark police against seven years earlier cannot be excused. The police ought to have known better. They were not acting in good faith. Thus, a judgment of acquittal on the obstruction charge should be entered.

The egregiousness of the police conduct in this case is far different from the cases where our courts have found the good faith requirement to be satisfied. For example, in State v. Crawley, discussed in Point I.B. supra, two police officers who were on patrol received a dispatch from headquarters "that a person was armed with a gun outside a bar." Id. at 443. The dispatcher provided a detailed description of the suspect, including his race, approximate age, height, weight, and that he was wearing "a green jacket, red shirt, blue jeans, and black boots." Id. at 444. "Less than two minutes later," on the same street as the bar, the officers saw the defendant, who "matched exactly" the description of the suspect, walking "at a semi-brisk pace" with his hands in his jacket pockets. Ibid. Additionally, this specific street was a "very high narcotics area" and the

specific bar was "notorious," known for "[a] lot of weapons offenses." Ibid. As they drove towards the defendant, the officers, who were in a marked patrol car, told the defendant to stop and that they needed to speak with him. Ibid. The officers did not activate the lights or sirens on their patrol car. Ibid. The defendant immediately "just started running," leading the officers on a foot chase. Id. at 444-45.

The legality of ordering the defendant in Crawley to stop was a close call, as evidenced by the fact that this Court upheld the constitutionality of the stop, while the Supreme Court did not decide the issue, calling it a "difficult question." Id. at 443, 451. The Supreme Court recognized that a stop like the one in Crawley could be constitutional "if the dispatcher . . . had been provided adequate facts from a reliable informant. . . ." Id. at 457. The Court explained that the officers were "[r]elying on the dispatcher's information and acting with precaution" when they tried to stop and talk to the defendant, and the Court found "nothing unreasonable about the steps taken" by the officers. Id. at 462. In fact, "[t]he failure to act would have constituted a dereliction of duty." Ibid. Under these circumstances, the Supreme Court had no difficulty concluding that the officers were acting in good faith.

The Court similarly concluded that police were acting in good faith in State v. Williams, 192 N.J. 1 (2007). In that case, around 2 a.m., officers on

patrol in a marked police car received a dispatch that "a black man wearing a black jacket" was possibly selling drugs at a specific address in Elizabeth. Id. at 4-5. The neighborhood where the home was located was known to the officers as "an area rampant with weapons and drug-dealing offenses," with one of the officers having made about 100 drug-related arrests in that immediate area, where about half of those arrests involved suspects armed with weapons. Id. at 5. The officers responded to the 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 where he was. Ibid. The officers "approached defendant for the purpose of interviewing him." Ibid. One of the officers asked the defendant to put his hands on his head so that they could conduct a frisk for their safety. Ibid. The defendant then pushed the officer and fled before he fell and was arrested. Ibid.

On these facts, the Supreme Court concluded that "the police officers were acting in good faith and under color of their authority." Id. at 13. The officers had "reasonably relie[d] on information from headquarters in responding to an emergency or public safety threat." Ibid. Although the Court found this investigatory stop to be unconstitutional, the Court emphasized that this was not a situation where the officers "without any basis arbitrarily detain[ed] a person

on the street" – something that "would have taken this case outside of the purview of the obstruction statute." Ibid.

Similarly, in State v. Reece, the police were clearly acting in good faith and under color of law when the emergency aid doctrine justified their entry into defendant's home. 222 N.J. at 172. In Reece, police responded to a dropped 9-1-1 call that originated from the defendant's home. Id. at 158. A uniformed officer who responded saw that there were three cars in the driveway. Ibid. The officer knocked on the front door and asked defendant if he had made the 9-1-1 call. Id. at 158-59. Defendant denied making the call and insisted that he was alone in the home. Id. at 159. The officer radioed for backup and confirmed with dispatch that the 9-1-1 call had come from defendant's home and his phone number. Ibid.

The officer then noticed "that defendant had a small abrasion on his right hand," "around the knuckle area" and "similar to 'an abrasion that you would receive from punching something.'" Ibid. The officer therefore asked defendant if he was married, the defendant responded that he was, but defendant's tone became "frustrated." Ibid. The officer asked defendant if he could enter the house and look around, but defendant refused consent. Ibid. Two additional officers arrived and told defendant that they "needed to check the house," but defendant "slammed the door closed." Id. at 159-60. While defendant was trying

to lock the door, the officers pushed the door open, announced that defendant was under arrest, and entered the residence. Id. at 160.

In upholding the defendant's resulting conviction for obstruction, the Supreme Court first held that the police's entry into defendant's home was justified by the emergency aid doctrine. The Court explained that the dropped 9-1-1 call allowed the police "to presume that there was an emergency," and that their subsequent observations – defendant's denial that he made the call, his claim that no one else was home despite there being three cars in the driveway, the abrasion on his hand, and his "agitation" when asked if he was married – provided "an objectively reasonable basis to believe that an emergency require[d] that [police] provide immediate assistance to protect or preserve life, or to prevent serious injury." Ibid.

The Court then explained that when the officer "announced his intention to enter the house, he was doing so in order to lawfully perform an official function under the emergency-aid doctrine." Id. at 172. The Court reaffirmed that "[a] suspect is required to cooperate with the investigating officer even when the legal underpinning of the police-citizen encounter is questionable." Ibid. Despite defendant's "suspicions about the officers' intentions," he was not permitted to "prevent the officers from performing their official function," because the officer had made "his investigatory intentions clear" and was

"acting under color of law." Ibid. Thus, "[b]ecause the emergency-aid doctrine justified the officers' warrantless intrusion into defendant's home, and because defendant hampered their entry by slamming the door, defendant's obstruction conviction should have been upheld." Ibid.; See also State v. Fede, 237 N.J. 138 (2019) (holding that the police were allowed to break the door chain and enter defendant's home under the emergency aid doctrine because of a concern for domestic violence, though vacating defendant's obstruction conviction because he did not affirmatively do anything to hamper police actions).

In this case, unlike in Crawley, Williams, and Reece, the police were not acting in good faith and under color of law. The police had not received any sort of specific tip or information from dispatch that drew them to this particular address. Cf. Reece, 222 N.J. at 158. They did not have any information that a particular person had done anything criminal, nor a description of any person they were looking for. Cf. Crawley, 187 N.J. at 444; Williams, 192 N.J. 4-5. While the officers testified that they received their patrol assignments during roll call, DaSilva and Serrano provided wholly different reasons for the officers' presence in the neighborhood that day – DaSilva testified that they were sent there because of two shootings in the preceding weeks (3T:26-25 to 27-5; Da 12), while Serrano testified that they were sent because of complaints about drug dealing in the area. (3T:181-22 to 182-7) Thus, unlike in Crawley and Williams,

the officers were not reasonably relying on information from headquarters to respond to an emergency or public safety threat. They were fishing, not acting in good faith.

Even if the officers were acting reasonably in patrolling that area for both potential violent crime and drug dealing, they acted wholly arbitrarily and not in good faith when they accosted the defendants. They did not know any of the men. They had no description of anyone they were looking for, so they had no reason to believe that the men "matched" any nonexistent description of a suspect. And the men were not doing anything out of the ordinary, let alone suspicious. They were simply standing outside in a residential neighborhood, talking to one another. The fact that Jaykil was carrying an ordinary fanny pack or shoulder bag does not change anything. As our Supreme Court has explained, when discussing so-called high crime areas, "[t]hree people standing on the street interacting with each other, whether in a high-crime neighborhood or not, is not suggestive of criminal activity without more." State v. Goldsmith, 251 N.J. 384, 403 n.6 (2022).

Moreover, DaSilva and Serrano's claims that Jaykil appeared "startled" by the arrival of two unmarked police cars and "looked around" adds absolutely nothing to the nonexistent basis for the police actions here. (3T:33-14 to 15, 34-11 to 13, 155-11 to 18) In fact, the Newark Police's own policies prohibit

stopping someone because they are nervous: "Newark Police Officers are prohibited from. . . [b]asing investigatory stops / detentions solely on an individual's response to the presence of police officers, such as an individual's attempt to avoid contact with an officer." Newark Police Division, General Order 18-14, Consensual Citizen Contacts and Investigatory Stops (Dec. 31, 2018), at p. 5.[9]

As the Supreme Court reaffirmed in State v. Nyema, "nervous behavior or lack of eye contact with police cannot drive the reasonable suspicion analysis given the wide range of behavior exhibited by many different people for varying reasons while in the presence of police." 249 N.J. 509, 533 (2022) (citing State v. Rosario, 229 N.J. 263, 277 (2017)). The Court in Nyema further explained one of the reasons that nervousness or appearing startled cannot form the basis of a reasonable suspicion determination: police officers, and the State, try to have it both ways – "In some cases, a defendant's alarmed reaction is asserted as justification for a stop, but in other cases, a defendant's non-reaction is argued to form the basis for reasonable suspicion." Ibid. (emphasis in original). The Court criticized this kind of policing where "whatever individuals may do –

[9] Available at: https// npdmonitor. wpengine. com/wp-content/uploads/2019/04/Stops-Policy.pdf (Last visited Sept. 17, 2024).

whether they do nothing, something, or anything in between – the behavior can be argued to be suspicious." Id. at 533-34.

Here, as in Nyema, Jaykil appearing startled when two unmarked police cars drove towards him and his brothers was not suspicious and certainly did not provide anything close to reasonable suspicion to conduct an investigatory stop. Instead, as in Nyema, "Zero plus zero will always equal zero. To conclude otherwise is to lend significance to 'circumstances [which] describe a very large category of presumably innocent travelers' and subject them to 'virtually random seizures." Id. at 535 (citations omitted).

In short, the police had no valid reason for stopping their cars to approach the defendants. Unlike in Crawley and Williams, where police had specific information from dispatch about a specific suspicious person, the police here had nothing. This was wholly arbitrary – nothing more than a random stop of a group of men who were doing nothing wrong or suspicious. Worse still, the police here did not begin by conducting a field inquiry or even an investigative stop; DaSilva jumped out of the car and immediately grabbed Jaykil's bag. Grabbing the bag was a seizure for purposes of the Fourth Amendment and Article 1, par. 7, for which the police needed probable cause – not just reasonable suspicion.

The police's actions here were flagrantly unconstitutional, unlike the close calls in Crawley and Williams, and the affirmatively constitutional actions in Reece. Where police act with such clear disregard of the most basic constitutional principles, they cannot be said to be acting in good faith. When police, for no reason, jump out of their cars and try to grab someone's bag, they are not acting in good faith. These police officers were not acting in good faith, and therefore the defendants did not "purposely obstruct[ ] . . . or prevent[ ] . . . a public servant from lawfully performing an official function. . . ." N.J.S.A. 2C:29-1(a). This Court should enter a judgment of acquittal because the State failed to prove this essential element of obstruction beyond a reasonable doubt.

Unfortunately, the flagrantly illegal conduct of these Newark police officers is not new, further demonstrating the State's failure to establish good faith. Between May 2011 and its final report, issued in July 2014, the United States Department of Justice investigated the Newark Police Department "after receiving serious allegations of civil rights violations by the NPD, including that the NPD subjects Newark residents to excessive force, unwarranted stops, and arrests, and discriminatory police actions." United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014) ("DOJ Report"). Overall, the investigation "showed a pattern or practice of constitutional violations in the NPD's stop and arrest practices, its response

to individuals' exercise of their rights under the First Amendment, the Department's use of force, and theft by officers." DOJ Report at 1.

The DOJ concluded that the NPD "has engaged in a pattern or practice of unconstitutional force in violation of the Fourth Amendment." Id. at 22. The DOJ review of the NPD's use of force "found that more than twenty percent of NPD officers' reported uses of force were unreasonable and thus violated the Constitution." Ibid. Additionally, the DOJ concluded that there was "reasonable cause to believe that NPD officers have engaged in a pattern or practice of theft from civilians," including "allegations of theft of money and drugs during arrests," and that "[t]he evidence makes clear that theft from arrestees has been more than an aberration limited to a few officers or incidents within the NPD." Id. at 30-31.

Moreover, the Report concluded that there was "reasonable cause to believe that the NPD . . . engages in a widespread pattern or practice of making pedestrian stops without such individualized suspicion." Id. at 7. In reaching this conclusion, the DOJ reviewed 39,308 reports detailing stops of suspects from January 2009 to June 2012. Of these reports, 6,200 "did not record any justification for the stop." Id. at 8 (emphasis in original). Analyzing a sample of the one third of the remaining reports, around 75% still "failed to articulate reasonable suspicion to justify the stop," as required by both police policy and

the Fourth Amendment. Id. at 8. In other words, the vast majority of the stops documented by the Newark police from 2009 to 2012 were wholly unconstitutional, unsupported by the required reasonable suspicion.

"[T]housands of the stops" involved facts similar to what occurred in this case – with "individuals who were described merely as 'milling,' 'loitering,' or 'wandering,' without any indication of criminal activity or suspicion," sometimes "augmented with a notation that the 'milling,' 'loitering,' or 'wandering' was taking place in high-crime areas, high-narcotic areas, or high-gang activity areas." Id. at 9. Additionally, and also similar to this case, Newark officers often "illegally stopped individuals whom officers perceived to react negatively to the presence of police officers, without any additional indicia of criminal activity." Id. at 10. For example, officers tried to justify stops for reasons including, "Actor Upon Noticing Our Presents [sic] Changed His Direction of Travel," and "Observed Actor Hid Behind A Car When He Observed Police Car." Id. at 10. As the DOJ noted in its report, "[w]ithout any indicator of criminal activity or suspicion of an intent to engage in criminal activity, these reasons do not constitute reasonable suspicion to detain an individual, and are therefore constitutionally deficient. Yet, the reports demonstrate that these have been the most common type of pedestrian stops made by NPD officers." Id. at 9. "[T]he repeated reliance on these insufficient

justifications strongly suggests that NPD officers do not appreciate what is legally required for reasonable suspicion of criminal activity." Ibid.

One of the consequences of the Newark police's "undisciplined stop practices" is that it "increase[s] the risk that officers, without appropriate guidance to distinguish between appropriate and inappropriate justifications for conducting stops, may rely on impermissible factors such as an individual's race, color, or ethnicity." Id. at 11. As the DOJ cautioned, the Newark police "should be particularly attentive to this concern in light of the disproportionate impact its stop and arrest practices have on Newark's black residents." Ibid.

The DOJ detailed the disproportionate effect of NPD's policing on Newark's Black and Hispanic residents, calling the disparity "stark and unremitting." Id. at 16. About 80% of NPD's stops and arrests involved Black residents, even though Newark's population is only 53.9% Black. Id. at 16, 19. "Black residents of Newark are at least 2.5 times more likely to be subjected to a pedestrian stop or arrested than white individuals." Id. at 16, 20.

The DOJ further noted that "there is more specific evidence that, while not conclusive, supports a conclusion that the NPD's failure to require its officers to adhere to legal standards for stops facilitates impermissible reliance on race." Id. at 19. For example, NPD officers "used the conclusory phrase 'suspicious person,' without articulating any facts that establish actual reason

for suspicion, to justify approximately 1,500 stops" over a three-and-a-half-year period. Ibid. Of these stops, "85% were stops of individuals identified by officers as black" – "a proportion starkly inconsistent with Newark's demographic breakdown." Ibid.

As the Report explained, "regardless of why the disparity occurs, the impact is clear: because the NPD engages in a pattern of making stops in violation of the Fourth Amendment, Newark's black residents bear the brunt of the NPD's pattern of unconstitutional policing." Id. at 17. As a result of "[t]his undeniable experience of being disproportionately affected by the NPD's unconstitutional policing," many community members distrust the police. Ibid. Many community members described Newark "as a city where black residents, and particularly black men, fear law enforcement action, regardless of whether such action is warranted by individualized suspicion." Ibid. Worse still, community members "indicated that unjustified stops by NPD officers have become so routine that many members of the black community have ceased feeling a sense of outrage and simply feel a sense of resignation." Ibid.

In short, this "disparate impact of the NPD's stop, search, and arrest practices appears to be an additional harm stemming, at least in part, from the same poor policing practices that result in stops, searches, and arrests that violate the First and Fourth Amendments." Id. at 19. When NPD officers fail "to

apply constitutional and legal standards for stops, searches, and arrests," it "increases the opportunity for officers to rely—consciously or unconsciously—on impermissible factors such as an individual's race when conducting law enforcement actions." Ibid.

The officers' actions in this case must be viewed in light of this history of unconstitutional policing by the Newark police, and particularly the "stark and unremitting" effect of these unconstitutional stops on Black men living in Newark. Id. at 16. Although the stops reviewed by the DOJ occurred about ten years before the stop in this case, the pattern of misconduct repeated itself here. The officers here jumped out of their unmarked cars, without turning on their body cameras, because a group of men were standing outside their home in Newark, and one of the men appeared startled by the police presence – something these officers found to be suspicious. Cf. Id. at 9-10. The DOJ wrote a scathing report emphasizing the unconstitutionality of this kind of stop back in 2014. When the police did the exact same unconstitutional thing in 2021, it was in bad faith. Accosting a group of Black men near their home for no reason amounts to bad faith. Doing so years after the United States Department of Justice entered into a consent decree with the city of Newark because of stops exactly like this one amounts to bad faith. The police's flagrantly unconstitutional conduct and bad faith means that the State did not, and cannot,

prove an essential element of an obstruction conviction – that the police were "[l]awfully performing an official function." Crawley, 187 N.J. at 460-61. In light of the State's failure to prove this element of obstruction, Jaykil's conviction must be vacated and a judgment of acquittal entered.

CONCLUSION

For the reasons set forth in this brief, this Court should vacate Jaykil Rodwell's conviction for obstruction and enter a judgment of acquittal.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: /s/ Nadine Kronis
Assistant Deputy Public Defender
Attorney ID: 404802022

Dated: November 13, 2024

STATE OF NEW JERSEY,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiff-Respondent,	
v.	DOCKET NO. A-2961-23
JAYKIL A. RODWELL A/K/A JAYKIL RODWELL	
Defendant-Appellant.	CRIMINAL ACTION
	On Appeal from a Judgment of Conviction of the Superior Court, Law Division, Essex County.
	Sat Below: Hon. Siobhan A. Teare, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT
VETERANS COURTHOUSE
NEWARK, NEW JERSEY 07102
(973) 621-4700 – Appellate@njecpo.org

Shep A. Gerszberg
Attorney No. 442502023
Assistant Prosecutor
Of Counsel and on the Brief

e-filed: December 13, 2024

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Counter-statement of Procedural History and Facts[1]

On June 1, 2021, Newark Police Detectives Michael DaSilva and Christopher Serrano and Essex County Prosecutor's Office Lieutenant Paul Ranges went to 62-64 Cypress Street in Newark around 1:30 p.m. (3T24-4 to 14, 26-20 to 23, 152-24 to 153-4).[2] All three officers were in "civilian clothing" and unmarked cars. Detective Serrano was driving with Detective DaSilva as a passenger; Lieutenant Ranges was driving separately. (3T29-21 to 22, 31-1, 31-4 to 6, 31-9 to 12, 153-9 to 15; 4T206-20 to 22, 207-8, 208-7 to 10). They had been assigned to that area due to recent violent criminal activity. (3T26-24 to 27-5, 152-13 to 17).

While traveling in their vehicle, Detective DaSilva and Detective Serrano noticed a group of men standing outside: Jaykil Rodwell, defendant, Justin Rodwell and Jasper Spivey. Detective DaSilva noticed that defendant became startled and nervous by police presence, he took a step backward, and he moved the shoulder bag in his possession away from the vantage point of the vehicle. (3T130-3). Detective Serrano observed that defendant noticed their police vehicle, immediately stopped talking and appeared startled. Specifically, he noticed defendant stiffen his body and focus in on their police vehicle. He

[1] Because they are intertwined, the State has combined them for the Court's convenience.

[2] The State adopts the defendant's transcript designation codes. (Db2, n.1).

additionally observed defendant take a couple steps back and maneuver his head in multiple directions.[3] Further, Officer DaSilva noticed Jasper Spivey walk away from the group, which he believed to be a ploy to distract attention from the rest of the group. (T113-2 to 6). These actions, based on Detective Serrano's extensive experience, led him to believe that defendant was looking for an avenue of escape and raised his suspicion as to criminal activity. (3T155-11). Based on these observations, and their extensive experience in firearm cases, Detectives Serrano and DaSilva also believed that there was a firearm in the shoulder bag as they observed the defendant specifically slide it away from their line of sight. (3T44-1, 127-23, 130-19).

Detectives Serrano and DaSilva had been partners for three years and could communicate to each other with just a look. (Da12). They agreed to investigate the matter. They stopped and exited their vehicle. Detective Serrano positioned himself at the rear of their vehicle for tactical positioning, and Detective DaSilva approached defendant. (3T157-11 to 158-6). Detectives DaSilva and Serrano both testified that Detective DaSilva identified himself as a police officer, however, as Detective DaSilva did not turn on his body worn

[3] Defendant claims that the footage does not show Jaykil Rodwell looking around (Db6), however, the defendant and co-defendants only come into view in the video when the officers are closer to them, and Detective DaSilva indicated in his testimony that while it is not visible in the video, he did see Jaykil Rodwell look around before they became visible on the video. (3T82-20).

camera, there is no video evidence of this declaration. (3T95-4, 131-11 to 14, 158-8).

As Detective DaSilva approached defendant, defendant turned and maneuvered his body to be between Detective DaSilva and the shoulder bag. (3T130-6). Believing, based on his experience and the actions of both the defendant and Jasper Spivey, that the bag contained a firearm and based on a fear that defendant could quickly retrieve the firearm, placing the officers in a dangerous situation if he asked defendant to turn over the shoulder bag, Detective DaSilva moved to grab the shoulder bag.[4] (3T44-1, 84-13 to 23, 107-1, 130-8 to 131-6, 140-21 to 141-5). Notably, Detective DaSilva did not grab the bag as soon as he exited the vehicle; there was a seven second period between when he exited the vehicle and when he grabbed the bag. (Da28 1:41-1:48). Further, he did not lunge for the bag, he moved around defendant to attempt to secure it. As soon as Detective DaSilva grabbed the shoulder bag, he clearly felt a firearm inside the bag. (3T37-11 to 14). He grabbed defendant's arm to place him under arrest, however, he did not inform defendant that he was under arrest. (3T85-5 to 17).

[4] Defendant claims the bag is not visible in the BWC video, but it is visible at 1:48. (Da28).

Defendant began resisting and pushed Detective DaSilva and ran towards Detective Serrano and Lieutenant Ranges. (3T38-15 to 18). Detective Serrano and Lieutenant Ranges attempted to arrest defendant. At that point Justin Rodwell and Jasper Spivey began attacking the officers to prevent them from doing so. They physically attempted to push the officers off the defendant. (3T47-11 to 14, 162-14). Detective DaSilva managed to obtain possession of the shoulder bag. (3T45-2). Justin Rodwell pushed Detective DaSilva towards a van that was parked nearby with its sliding door open. (3T45-1, 47-11 to 18). Detective DaSilva turned on his body camera as he was pushed. (3T93-13 to 21).

At this point, Detective DaSilva called for backup and attempted to deescalate the situation by repeatedly saying "stop." (3T50-4 to 51-10). Jasper Spivey then approached Detective DaSilva, looking at the shoulder bag. (3T52-3 to 21). He then attempted to take the shoulder bag from Detective DaSilva and in the process, punched Detective DaSilva in the chest, knocking off his body worn camera. (3T52-24 to 25, 53-16). Detective DaSilva fell to the ground with the shoulder bag and covered it with his body. (3T54-17 to 25, 164-9 to 13). Jasper Spivey then attempted to take the shoulder bag from Detective DaSilva again. (3T58-18). During this attack, Jasper Spivey placed Detective DaSilva in a choke hold and began choking him. Detective Serrano noticed that his partner

was in danger and punched Jasper Spivey in the face to get him off Detective DaSilva. After being punched, Jasper Spivey released Detective DaSilva. (3T55-2 to 23, 165-18 to 166-5).

Immediately after Jasper Spivey released Detective DaSilva, Branden Rodwell arrived and tackled Detective Serrano to the ground. (3T166-15, 183-25 to 184-3). There was then "kind of like a big pile up on the ground." (3T167-9 to 10). Lieutenant Ranges went to help Detective Serrano, lifted Branden Rodwell off Serrano's back, and put him in a "bear hug." (4T215-18 to 23, 216-3 to 7, 238-1 to 10). While they were on the ground, Jasper Spivey grabbed the shoulder bag. Detective Serrano tried to prevent him from escaping with the shoulder bag and then "was forced to let him go" after what "felt like a kick in the head." (3T167-11 to 18). Jasper Spivey managed to escape with the shoulder bag. (3T167-19). Defendant also left the scene. (Da12, 17-18).

After defendant and Jasper Spivey escaped, the officers moved to take Branden Rodwell and Justin Rodwell into custody. Justin Rodwell approached Detective DaSilva and was "[r]esisting [his] control" and struck Detective DaSilva in the chest. (3T60-22 to 61-3, 61-7 to 13, 64-2). Detective Serrano attempted to take the Branden Rodwell into custody, however, he did not comply. (3T168-20). Branden Rodwell and Justin Rodwell were taken into custody.

On September 3, 2021, an Essex County Grand Jury returned indictment 21-09-1649-I, charging defendant with three counts of third-degree aggravated assault on a law enforcement officer, fourth-degree obstruction, and third-degree resisting arrest by force. (Da1-9). On September 14, 2022, all the charges in the indictment were downgraded to disorderly persons offenses. The defendant was charged with three counts of simple assault, one count of obstruction, and one count of resisting arrest. (Da11). On February 20, 2024, defendant filed a notice that he would be raising the affirmative defense of self-defense. (Da20-21). On March 20 and 21, 2024, a bench trial for all four co-defendants was held before the Honorable Siobhan A. Teare, J.S.C. (3T-5T). At the close of the trial, after both sides had rested, defendant made a motion for a judgment of acquittal on two counts of simple assault. (5T21-1 to 22-13). The court reserved judgment on the motion. (5T24-7 to 20). On April 23, 2024, Judge Teare issued a written opinion, acquitting all defendants of simple assault and resisting arrest, but convicting them each of obstruction. (Da10-19). Defendant filed a notice of appeal on May 28, 2024.[5] (Da23-25).

[5] Each co-defendant has an appeal currently pending in this Court.
Branden K. Rodwell A-3623-23
Justin Rodwell A-2960-23
Jasper D. Spivey A-2967-23

Legal Argument

Point I

Defendant repeatedly confuses the various standards on appeal. There is no implicit motion under R. 3:18-1, and even if this appeal is considered under that standard, defendant flips between arguing under multiple different standards of appeal. With that said, the issue of what the proper standard of review is in this case is immaterial as all potential standards amount to the same outcome.

Following a bench trial, the defendant was convicted of disorderly persons obstruction. Per the statute, "A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act." N.J.S.A. 2C:29-1(a). To sustain a guilty verdict, the State must prove each element of a charged offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 361-62 (1970); State v. Vick, 117 N.J. 288, 293 (1989); State v. Ingenito, 87 N.J. 204, 213-15 (1981). Defendant argues that the trial court based its decision to find defendant guilty on several allegedly mistaken factual findings and because he alleges that the State did not prove each element of the obstruction charge beyond a reasonable doubt and that thus, the defendant's conviction cannot stand. (Db1-2).

Before addressing the defendant's substantive arguments, the State first wishes to clarify the appropriate standard of review. Defendant presents his argument in the context of an appeal under Rule. 3:18-1 and State v. Reyes, 50 N.J. 454 (1967). This rule and case govern the judication of a motion for a judgement of acquittal. The standard for assessing whether a judgment of acquittal must be entered is "whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all favorable inferences which reasonably could be drawn there from, a reasonable jury could find guilt of the charge beyond a reasonable doubt." Reyes, 50 N.J. at 458-59.

However, in this case, no motion under Rule. 3:18-1 or Rule. 3:18-2 was made for defendant's obstruction charges. Defendant's counsel explicitly moved for acquittal for the simple assault charges, but not for the obstruction charge. (5T21-1). Defendant argues that, as this was a bench trial rather than a jury trial, counsel's closing arguments asking the judge to acquit should be viewed as the equivalent of a motion for a judgment of acquittal. Or, in the alternative, the court's failure to acquit defendant of obstruction of justice should be reviewed by this Court under the plain error standard found in Rule. 2:10-2. (Db13, n. 6).

However, this is not how a motion for a judgement of acquittal works under caselaw. In a bench trial, closing arguments are not automatically taken

to be a motion for a judgment of acquittal; the defendant's counsel must actually make a motion for a judgment of acquittal for the appeal to be considered on those grounds. See State v. Blaine, 221 N.J. Super. 66, 68 (App. Div. 1987). It must be highlighted that in this case, defendant's counsel did make a motion for acquittal on some of the charges this defendant faced. That motion was denied. But the fact that it was made, and his counsel explicitly chose to leave out the obstruction charge is telling as to whether this appeal is cognizable under that standard. Additionally, even post-verdict, the defendant could have moved for a judgment of acquittal under R. 3:18-2. He did not do so and raises this argument for the first time on appeal.

The principle governing this issue is clearly expressed in prior caselaw. The Appellate Division has held that:

> [w]ith respect to defendant's argument that a judgment of acquittal should have been entered sua sponte by the trial court at the close of the State's case, it should be noted that defendant never moved for such relief. Thus, sound principles of appellate procedure preclude this court from now considering such argument. Moreover, even if we were to ignore this necessary and fundamental principle of appellate review and entertain defendant's claim on the merits, it is perfectly clear on this record that a jury could have found defendant guilty of the charge of aggravated manslaughter beyond a reasonable doubt. In any event, the jury verdict was not a manifest denial of justice under the law. [State v. Bogus, 223 N.J. Super. 409, 419-20 (App. Div. 1988) (internal citations omitted).]

Based on this precedential decision, this Court should decline to hear this appeal which is explicitly described by the defendant as a Reyes motion appeal.

While Bogus was an appeal from a jury trial, not a bench trial, there is no compelling reason to treat the two differently in this regard. Judges must have clarity as to what they are expected to judicate when they rule on a motion. In this case, not only did the defendant not make a Reyes motion, but he was also explicitly given the opportunity to make one and declined to do so. To create an "implicit Reyes motion" which preserves a defendant's right to appeal under R. 3:18-1 even without said motion having been made puts judges in an untenable position and essentially forces them to proactively rule on a hypothetical Reyes motion in every case, which, in turn, means that a defendant never has to affirmatively make a Reyes motion and can just press the issue on appeal should the trial not go his way, which is clearly not the intent of R. 3:18-1.

Such a holding would also fly in the face of R. 1:7-2, which states that "[f]or the purpose of reserving questions for review or appeal relating to rulings or orders of the court…a party, at the time the ruling or order is made or sought, shall make known to the court specifically the action which the party desires the court to take or the party's objection to the action taken and the grounds therefor…" The defendant specifically and intentionally left the obstruction charge out when he made a motion for acquittal, thus, he did not make known to the Court the action he desired the trial court to take, namely consideration of

a Reyes motion for the obstruction charge. Thus, based on Bogus, this Court should simply decline to hear this appeal.

R. 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." However, having a case heard under R. 2:10-2 is a high burden. "The mere possibility of an unjust result is not enough." State v. Funderburg, 225 N.J. 66, 79 (2016). The plain error standard requires a determination of: "(1) whether there was error; and (2) whether that error was 'clearly capable of producing an unjust result'" State v. Dunbrack, 245 N.J. 531, 544 (2021). "To determine whether an alleged error rises to the level of plain error, it 'must be evaluated in light of the overall strength of the State's case.'" State v. Clark, 251 N.J. 266, 287 (2022). Additionally, the burden rests on the defendant to establish that the trial court's actions constituted plain error. State v. Santamaria, 236 N.J. 390, 404-05 (2019). This defendant has not met his burden.

The crux of the defendant's argument on appeal as to R. 2:10-2 is threefold: first, that the trial court did not consider and should have granted credence to defendant's claim that he fled the scene in self-protection, and thus, defendant did not act with the requisite intent to commit the crime of

obstruction; second, that the trial court mistakenly found that defendant threw the shoulder bag to Jasper Spivey, and then fled the scene together with Jasper Spivey, and convicted him based on that incorrect finding; and third, that the trial court's determination that Detectives DaSilva and Serrano and Lieutenant Ranges acted in good faith is plain error. (Db14-16). However, as the State will show in this brief, the defendant cannot meet both prongs of the plain error test as to any of these arguments. Therefore, this Court should not hear this case on these grounds.

With that said, the State recognizes that this Court may choose to rule on the merits of this appeal under the plain error standard in R. 2:10-2 or it might sua sponte transform this improper Reyes appeal into an appeal of the verdict of the bench trial. It must be noted therefore, that in this particular case, the actual standard used is irrelevant to the ultimate outcome.

The standard for granting a Reyes motion under R. 3:18-1 is "whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all favorable inferences which reasonably could be drawn there from, a reasonable jury could find guilt of the charge beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967). The standard of review in appealing the verdict in a bench trial is "whether there is sufficient credible evidence in the record to support the judge's

determination."[6] State in the Int. of R.V., 280 N.J. Super. 118, 120-21 (App. Div. 1995). Both standards rest on the sufficiency of the evidence, not the weight of the evidence, in fact, a claim that the verdict is against the weight of the evidence is not cognizable in a bench trial. So, they are functionally identical in what the reviewing court must determine: whether there is sufficient evidence to support a finding of guilt.

As for what sufficient evidence means, under Reyes it is defined as where a reasonable jury could find guilt of the charge beyond a reasonable doubt. For an appeal of a verdict in a bench trial, reviewing courts "do not disturb the factual findings…of the trial judge unless [they] are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms

[6] The State notes that while the defendant couches the majority of this appeal in terms of a Reyes motion, he also attacks the credibility of the officers in claiming that they testified contrary to each other on some small details. (Db4, 22). He seems to be arguing that Judge Teare's finding that they were credible was incorrect. However, credibility issues are not relevant to a Reyes motion. State v. Pickett, 241 N.J. Super. 259, 265 (App. Div. 1990). Additionally, defendant alleges that some of Detective DaSilva and Serrano's testimony is inconsistent with the BWC or vehicle footage. However, the footage is unclear and not always pointed at the subject of the testimony, and thus, anywhere where the unclear footage allegedly conflicts with the testimony of the officers, this Court must, under Reyes, credit the testimony of the officers. In raising this issue as well, defendant claims to be making this appeal under Reyes but ignores the requirement that the State be given the benefit of all inferences. Thus, defendant confuses the issues and the standard in raising those concerns, the State therefore mentions both standards.

Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). Again, these standards are fundamentally identical. If a reviewing court finds that a finding of guilt is based on factual findings which are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice, then they are also by definition finding that no reasonable jury could find guilt.

The only difference between the standards is the deference given to the findings of the trial court. In a Reyes motion, an appellate court must "review the record de novo in assessing whether the State presented sufficient evidence to defeat an acquittal motion." State v. Dekowski, 218 N.J. 596, 608 (2014). On the other hand, "[w]hen reviewing the result of a bench trial, [reviewing courts] do not make factual findings. We must give deference to those findings of the trial judge which are substantially influenced by his or her opportunity to hear and see the witnesses and have the 'feel' of the case, which we do not enjoy upon appellate review." State ex. rel. D.M., 451 N.J. Super. 415, 424 (App. Div. 2017). Reviewing courts "do not disturb the factual findings…of the trial judge unless [they] are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms, 65 N.J. at 484. So, in a Reyes motion, no deference is given to the trial court, and in a bench trial appeal that

the evidence was insufficient to sustain a guilty verdict, deference is given to the findings of the trial court. Thus, in insisting on this appeal being reviewed under a Reyes motion standard, the defendant actually chooses a higher burden for himself, as he lacks the ability to defer to any trial court findings favorable to him.

To use an illustrative example from this appeal, Detectives DaSilva and Serrano testified that Detective DaSilva announced himself as a police officer "[a]s [he] was exiting the vehicle" and approached Jaykil Rodwell. (3T36-19 to 20, 158-8 to 9). The defendant notes that the trial court found, "nowhere has it been established that the officers[] identified themselves and announced their presence." (Db7 citing Da12). Under a direct appeal of the verdict, this finding by the trial court would be entitled to deference. However, the Reyes standard demands that the State be given the benefit of all favorable inferences which reasonably could be drawn. Thus, if this Court reviews this appeal under the Reyes standard, this Court must analyze the question presented by the defendant under the assumption that Detective DaSilva did, in fact, announce that he was a police officer, as he testified to that fact, and it is reasonable that a jury would find that testimony to be credible. In arguing under the Reyes standard, the defendant loses the benefit of any favorable findings made below.

Therefore, the defendant's argument as to the standard of review is not relevant to the ultimate outcome of this case. As for Judge Teare's legal determinations, the State agrees that a trial judge's legal conclusions are not owed deference, however, it is important to note that under the Reyes standard, the reviewing court must find in favor of the State in any factual disputes and then use the State's facts, provided they are supported by any credible evidence in the record, in determining the applicable legal conclusions which follow from those facts. Additionally, should this Court review this appeal under the general standard for appealing the verdict in a bench trial, a trial court sitting without a jury must "state clearly its factual findings and correlate them with the relevant legal conclusions." State v. Locurto, 157 N.J. 463, 470 (1999). Judge Teare plainly did so.

First, Judge Teare set out her statement of facts. (Da11-13). Then she set out her credibility determinations of the testifying witnesses. (Da13-15). Next, Judge Teare discussed the legal background for the case, and relevant prior caselaw and applied the law to each defendant. (Da15-19). "When the reviewing court is satisfied that the findings and result meet this criterion, its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal." Locurto, 157 N.J. at 471. Therefore, in a case such as this, where Judge Teare met the

requirements of Locurto, he reviewing court should only reverse, if it determines that the trial court's findings and legal conclusions were "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]" Rova Farms, 65 N.J. at 484.

The State will also note that defendant repeatedly switches between and confuses the relevant standard. For example, when defendant argues that the trial court erred in failing to address defendant's assertion that he fled the scene of the melee to protect himself. (Db15-16). If this appeal is made under Reyes, as the defendant claims that it is, then the issue is not whether the trial court erred in failing to address the defendant's assertion, but rather whether the State presented any credible evidence which a reasonable jury could use to find guilt of the charge beyond a reasonable doubt regardless of the defendant's self-defense claims. Defendant even cites to Locurto in making this argument, which specifically governs general direct appeals from a guilty verdict in a bench trial, not Reyes motions. (Db17). In couching these claims in terms of Locurto and the findings of the trial court, after claiming that his appeal is being made under Reyes, (Db14,16), defendant again confuses the issues in the instant appeal leaving the State responsible for cleaning up the issues with the standard to be applied in its argument.

However, regardless of the standard applied, assuming this Court decides to rule on the merits of defendant's appeal, the judgment of conviction should be affirmed as the State did prove beyond a reasonable doubt that the officers were acting in objective good faith. Judge Teare's finding as to that fact was not "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence" such that a reversal is warranted. And certainly, the State met the very low burden to have introduced evidence which, giving the State all reasonable inferences, could lead a reasonable jury to find guilt of the charge beyond a reasonable doubt.

Point II

Defendant's obstruction conviction must be affirmed as the State proved every element of its case beyond a reasonable doubt.

(1) The State proved that defendant acted with the requisite intent to obstruct justice.[7]

Defendant argues that the State did not prove that the defendant acted with the requisite intent to be convicted of obstruction of justice. (Db16-29). The defendant argues two separate issues in advancing this argument. First, he argues

[7] This section responds to Point I(A) (Db16-20) and I(B) (Db20-29) of the defendant's brief. Point I(A) discusses the defendant's challenge to the factual findings of the trial court, and Point I(B) discusses the defendant's self-defense claim. Both points relate to the intent element of the obstruction charge. The State's response to both arguments is consolidated here for convenience.

that the trial court made mistaken factual findings in its decision to find the defendant guilty.

The defendant notes that the trial court found that "the defendant is seen throwing the fanny pack to Justin Rodwell and Jasper Spivey as officers engage in a melee with the co-defendants… Additionally, [defendant] was seen by Lieutenant Ranges fleeing the scene with Jasper Spivey with the fanny pack that was briefly recovered by Det. DaSilva" (Da17). Defendant argues that Detective DaSilva's BWC footage does not show defendant throwing the shoulder bag to anyone and the record does not reflect that Lieutenant Ranges observed the defendant flee the scene with Jasper Spivey. (Db17-19). After reviewing the video footage, the State concedes this point. The video footage does not depict the defendant throwing the shoulder bag at any point. (Da28). The State agrees with the defendant's characterization of the footage as depicting defendant throwing what appears to be a small item, possibly a key ring, but not the shoulder bag. (Db18, n. 7). This is additionally supported by the testimony of Detective DaSilva who indicated that he obtained possession of the shoulder bag from the defendant, and then lost the shoulder bag later when Jasper Spivey took it from him in the melee. (3T45-2 to 4, 55-24 to 56-7). Additionally, the State concedes that the defendant was not specifically seen by Lieutenant Ranges as fleeing the scene with Jasper Spivey. Lieutenant Ranges testified that he was

attempting to take the defendant into custody when he observed Jasper Spivey assault Detective DaSilva. (4T214-15 to 18). Lieutenant Ranges then testified that at that point, "[e]ither I let go [of the defendant] or he gets away. Somehow, some way, my grip gets dislodged. I let go. Something happens. Eventually he gets -- he leaves." (4T224-1). He did not see the defendant after that point. The State concedes that the trial court's factual findings on these two issues are unsupported by the record. However, these mistakes are not grounds to overturn the defendant's conviction.

Defendant argues that his conviction must be overturned based on these mistakes because "[w]ithout these mistaken factual findings, the only evidence that was presented at trial regarding [defendant's] flight is that, at some point, he broke away from the melee and fled. This is wholly inadequate to demonstrate that [defendant] fled with the purpose of obstructing an official function." (Db19-20). However, the registrant's argument is legally incorrect. That the defendant broke away from the melee and fled in violation of the officers' instructions is sufficient to demonstrate that defendant fled with the purpose of obstructing an official function.

First, the State will note that if this appeal is reviewed under the Reyes standard, then the findings of the trial court are irrelevant as the record is reviewed de novo and as the State will show, the record, reviewed de novo

supports the defendant's conviction for obstruction. However, even looking at the overall findings of the trial court, sufficient evidence exists to support the defendant's conviction regardless of the two issues with the trial court's factual findings.

Judge Teare found that "the officers' demeanor and immediate commands to defendants made it abundantly clear that defendants knew that Detective DaSilva and Detective Serrano were law enforcement officers that were attempting to investigate [defendant]." (Da16). Detective DaSilva's BWC footage clearly shows that Detective DaSilva was instructing all parties to "stop" including the defendant. (Da28). Thus, defendant was aware that he was the primary subject of the officers' investigation, was verbally instructed to "stop" and was aware that Lieutenant Ranges was attempting to take him into custody.[8]

[8] While Lieutenant Ranges did not verbally indicate that the defendant was under arrest, an officer's failure to announce that a defendant is under arrest has been held in cases relating to resisting arrest to only be one factor to be considered in evaluating whether a defendant knows that he is under arrest. Instead, the court looks to the totality of the circumstances in asking whether a "jury . . . could determine that the defendant knew that the police were attempting to effectuate an arrest and resisted the arrest." State v. Branch, 301 N.J. Super. 307, 321 (App. Div. 1997), rev'd on other grounds, 155 N.J. 317 (1998). The law regarding resisting arrest applies to obstruction charges as well. See State v. Crawley, 187 N.J. 440, 455-56 (2006) (noting that obstruction and resisting arrest are "sister statutes" and the same public policy concerns apply equally to them). In evaluating whether defendant's actions are sufficient to support an obstruction conviction, the totality of the evidence must be looked at, and as Judge Teare found, defendant knew that the officers were attempting to place him under arrest.

He ignored those instructions to stop, he ignored the officers' attempts to take him into custody, and instead he fled the scene. The State acknowledges that defendant was found not guilty of resisting arrest because the trial court found that "defendant couldn't comply even if he wanted to because he was being pulled in multiple ways from both officers and co-defendants." (Da17). However, he could have stayed on the scene until after the melee was resolved and then submitted to the officers' clear instructions and intent. He chose not to. He chose to flee the scene.

In State v. Lashinsky, 81 N.J. 1, 11 (1979), our Supreme Court reasoned that "where an officer's instructions are obviously reasonable, in furtherance of his duties, an individual toward whom such instructions are directed has a correlative duty to obey them. If his refusal to respond results in an obstruction of the performance of the officer's proper tasks, this will constitute a violation of the disorderly persons statute." Id. (internal citation omitted).

Here, the officers' explicit instructions to all parties to "stop"[9] and their implicit instructions to the defendant that he was the subject of an investigation

[9] The State wishes to head off any potential argument by defendant that Detective DaSilva's instruction to "stop" did not restrict his ability to flee the scene because Detective Dasilva did not explicitly say that he is under arrest and cannot leave the scene, he only said to stop. In Crawley, 187 N.J. at 456, the Court found that a defendant who fled after an officer said "stop, I need to speak with you" could be convicted of obstruction for fleeing. Here, between Detective DaSilva's instruction that all parties should "stop", and Lieutenant Ranges'

and was to be taken into custody were obviously reasonable and in furtherance of the officers' duties. The defendant's flight was a refusal to abide by the officers' explicit and implicit instructions. This refusal to abide by their instructions resulted in an obstruction of the officers' performance of their proper tasks because they could not take defendant into custody. Thus, sufficient evidence exists in the record to show that defendant violated the disorderly persons statute, regardless of the incorrect factual findings by the trial court. Therefore, the defendant's obstruction conviction must be affirmed.

Having established that regardless of the standard applied, and regardless of the trial court's mistakes of fact, sufficient evidence exists in the record to support defendant's obstruction conviction for fleeing the scene, the State now turns to the second part of the defendant's argument as to intent. Defendant argues that the trial court failed to expressly consider that the defendant fled the scene in self-defense rather than to obstruct the officers' investigation. (Db20-29). Without getting into the details of every legal claim made by the defendant

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attempt to take the defendant into custody, it is clear that the officers expressed both explicitly and implicitly that the defendant could not leave the scene. Additionally, that the instruction to "stop" came after the fight between the officers and the co-defendants commenced and not specifically directed at the defendant in response to his flight is of no import. The officers instructed all parties to stop what they were doing and submit to their investigation, defendant's flight from the scene was in violation of that instruction.

in this section of his brief, many of which slightly overstate the rule[10], the State agrees with the fundamental idea that a defendant may claim justified self-defense in response to an obstruction charge. The success of this claim rests on whether, based on the totality of the circumstances, the defendant reasonably believes that the officer is not acting under color of his authority, but instead is engaging in a private altercation with the defendant.[11] This rule follows from prior caselaw, the text of N.J.S.A. 2C:3-4(b)(1)(a) and the model jury charge for obstruction. Defendant informed the trial court of his intent to rely on self-defense during the trial. Thus, the trial court was obligated to consider his self-defense claim. However, the trial court did consider the defendant's self-defense claim and properly rejected it.

First, as to whether the trial court considered the defendant's self-defense claim, the defendant alleges that "the trial court did not consider [defendant's]

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[10] For example, defendant claims that "a finder of fact must consider whether a defendant charged with obstruction reasonably acted in self-protection during an encounter with a police officer where there is evidence that it appeared to the defendant that the police officer was engaging in a private altercation outside the scope of his official duties." However, the State does not concede that a finder of fact must sua sponte consider whether self-defense applies in every obstruction trial, even those where a defendant makes no affirmative claim of self-defense.

[11] The State stresses that a defendant may still be convicted for resisting or obstructing an unlawful arrest, such as an arrest where the officer has no probable cause to arrest, so long as the defendant is aware that the officer is acting in his official capacity. This self-defense principle is limited to cases where the finder of fact holds that the defendant reasonably believed that the officer was acting as a private individual, not as a police officer.

assertion that he fled in self-protection…" (Db26). However, the defendant goes on to acknowledge that the trial court did find that "although [police] officers never stated explicitly that defendant…was under arrest, the totality of the circumstances presented indicate that the officers were in fact attempting to place the defendant under arrest." (Db26 citing Da17). Defendant further acknowledges that the trial court found that "it is hard for this [c]ourt to believe that defendants did not know that these gentlemen were law enforcement as they exited their unmarked car." (Db26 citing Da12). Considering that the question posed by the defendant's self-defense claim is whether he reasonably believed the officers were acting as private individuals engaging in a private altercation, the finding of the trial court that the defendant knew that the officers were officers and that they were attempting to arrest the defendant is clearly a rejection of the defendant's self-defense claim.

Defendant tries to brush off these findings by arguing that they merely judicate "whether defendant realized that the police officers were in fact police officers at some point during the altercation" and whether they were in fact attempting to arrest the defendant, and instead, he argues, the real question is whether "it may have reasonably appeared to [defendant] that the officers were not attempting to arrest or investigate him, but instead acting outside the scope of their official roles." (Db26-27). However, the trial court clearly ruled on

exactly that issue. "Despite officers failed attempt to be unrecognizable, the officers' demeanor and immediate commands to defendants made it abundantly clear that defendants knew that Detective DaSilva and Detective Serrano were law enforcement officers that were attempting to investigate [defendant]." (Da16, emphasis added). There is simply no way to interpret this sentence other than as a direct answer to the question the defendant claims is at the core of his self-defense claim. Did it reasonably appear to the defendant that the officers were not attempting to arrest or investigate him, but instead acting outside the scope of their official roles? No, it did not reasonably appear as such because defendants knew that Detective DaSilva and Detective Serrano were law enforcement officers that were attempting to investigate the defendant. Caselaw on this issue is clear, when evaluating a claim of self-defense, whether a defendant reasonably believes self-defense is justified rests, not on the perception of the defendant, but rather on the judgement of the finder of fact. "The reasonableness of the defendant's belief is to be determined by the [finder of fact] using an objective standard of what a reasonable person would have done in defendant's position in light of the circumstances known to defendant…" State v. Bryant, 288 N.J. Super. 27, 34 (App. Div. 1996). The finder of fact made a ruling sufficiently supported by the evidence in the record and that ruling should be affirmed.

Because defendant makes several points on why the trial court's finding on this issue is incorrect, and because the Reyes standard is a de novo review, the State will briefly address his arguments on this point. Defendant argues that "the officers emerged from unmarked cars in plainclothes, did not announce themselves as police officers based on the body camera footage, and never announced that [defendant] or any of his co-defendants were being investigated or arrested…DaSilva did not tell anyone to stop until well after he had grabbed [defendant], a melee had already broken out, and [defendant] had been pushed against a metal fence, where he was being pulled in different directions by the police officers and his brothers…[t]hus, [defendant] likely did not know that he was being arrested under these circumstances and fled to protect himself." (Db27-28).

It must be remembered that both the Reyes standard and the general rules of appeals from bench trials are sufficiency of the evidence tests, not weight of the evidence tests, thus, it only needs to be shown that the State produced enough evidence that a reasonable trier of fact could conclude that the State defeated the defendant's self-defense claim. First, Detective DaSilva did testify that he announced himself as a police officer when he exited the vehicle. (3T36-19 to 20, 158-8 to 9). Under the Reyes standard, credibility is not examined, and that statement must be taken as true. Thus, under the Reyes standard, the State clearly

presented enough evidence to say that the officers identified themselves as police officers.

The fact that Detective DaSilva did not tell anyone to stop until after the melee began is of no consequence. Caselaw has shown that a self-defense claim must be evaluated at the time of the act claimed to be in self-defense, not at the beginning of the encounter. State v. Montague, 55 N.J. 387, 406 (1970). When the defendant ran, Detective DaSilva had instructed him and his co-defendants to stop. He ignored that command in running and under Lashinsky, that is sufficient for a disorderly persons obstruction conviction.

Further, in judicating whether the State presented sufficient evidence to prove that defendant was aware that the officers were acting in their official capacity and not as private individuals, it must be noted that, by the time the defendant fled the scene he would have: seen the officers badges (4T209-7 to 10), been instructed to stop by Detective DaSilva and would have seen him radio for backup (3T50-4 to 51-10), seen other officers take tactical positions near the vehicles (3T157-11 to 158-6), and been involved in a brawl with individuals he knew to be officers. It is utterly evident that the State presented enough evidence to prove its case on that topic. As said in Montague:

> [T]hat [the officer was clearly identifiable as an officer] in itself did not obviate the possibility that the officer…was engaged in a private altercation rather than in the bona fide performance of his police duties. But that would not be the normal inference and, with that in

> mind, anyone intervening in restraint…of the officer would fairly be called upon to justify his conduct by adequate supporting evidence that it reasonably appeared to him and he so reasonably believed that the officer…was not engaged in the bona fide performance of his police duties but was actually committing an unlawful assault. [Montague, 55 N.J. at 405.]

While that case referred to a uniformed officer, given the extent of the evidence that the officers were identifiable as police officers, this case should be treated the same. This defendant provided no "adequate supporting evidence" as to any of his claims.

Finally, the defendant argues, "[defendant] likely did not know that he was being arrested under these circumstances and fled to protect himself." (Db28). He further argues that "the State also failed to establish that [defendant] understood [Detective] DaSilva's eventual command to stop as an effort to place him under arrest or conduct an investigation… by failing to demonstrate that [defendant] knew that he was being arrested or that the police officers were performing their official duties as such, the State failed to prove beyond a reasonable doubt that defendant fled with the purpose of obstructing an official function." (Db28-29). However, the State need not prove that defendant knew he was being arrested. To defeat his self-defense claim, the State only needed to prove that the defendant did not reasonably believe that the officers were acting as private individuals. Whether defendant did or did not believe that the officers

were attempting to arrest him, simply investigate him, or merely order him to stop assaulting them, is of no consequence.

Further, the State reiterates that this appeal cannot be judicated on "weight of the evidence" claims. Defendant's discussion of whether it was "likely" that defendant held certain beliefs is irrelevant. Under Reyes, the defendant must show that the State presented no evidence, while giving the State the benefit of all favorable inferences, that the defendant knew that the officers were attempting to arrest or investigate him such that the only possible conclusion a reasonable trier of fact could come to was that the defendant reasonably believed that the officers were acting in a private capacity. Under the general standard, the defendant must show that Judge Teare's finding that defendants knew that Detective DaSilva and Detective Serrano were law enforcement officers that were attempting to investigate defendant is so manifestly unsupported by the credible evidence that it cannot be allowed to stand. Under either standard, the mere possibility that defendant did not know he was being arrested and fled to protect himself is not enough for the defendant to prevail. Under either standard, the defendant's self-defense claim fails, and the judgement of conviction must be affirmed as the trial court both considered and properly rejected the defendant's self-defense claims.

The State proved the defendant's intent to obstruct the officers' official duties by fleeing the scene by providing evidence that defendant was aware that they were police officers, that they ordered him to stop during the melee, and that they were attempting to investigate him. Certainly, at the very least, the State provided sufficient evidence to sustain the defendant's conviction which is all that is required by the relevant standard of review. Thus, the trial court's incorrect findings of fact are harmless error and are not grounds for reversal. R. 2:10-2. The defendant's conviction must be affirmed.

(2) The State proved that the officers acted in good faith.

Defendant's final argument is that the State failed to prove that police during the incident in question were "lawfully performing an official function" and thus, not every element of the crime was proven beyond a reasonable doubt. N.J.S.A. 2C:29-1(a). (Db29-46). To establish the that a public servant was "[l]awfully performing an official function" the State must prove that a police officer was "acting in objective good faith, under color of law in the execution of his duties." Crawley, 187 N.J. at 460-61.

Defendant argues that Judge Teare incorrectly interpreted and improperly applied the relevant caselaw in finding that the officers in this case were acting in good faith. The defendant argues that the defendant was doing nothing wrong or suspicious and the police "arbitrarily accosted" the defendant and his co-

defendants without any valid cause. Further, the defendant argues that the police's conduct aligns with practices the United States Department of Justice warned the police against. Defendant thus argues that the police's conduct was in flagrant violation of the constitution, beyond what the law permits, and they should have known better, and thus, their actions were not in good faith. (Db30-31).

In addressing the merits, or rather lack thereof, of the defendant's arguments, the State first must discuss the testimony of the officers elicited at trial, specifically Detectives DaSilva and Serrano. Under the Reyes standard, this Court must view their testimony as fundamentally true without making credibility findings unless given cause to find that no reasonable juror could find their testimony credible. See State v. Wilder, 193 N.J. 398 (2008). Our courts have been clear that credibility issues should not be resolved by the judge when ruling on a motion for acquittal because such issues must be decided by the jury, or in this case, the judge acting as the finder of fact. Pickett, 241 N.J. Super. at 265. Additionally, Reyes says that such motions must be judicated while "giving the State the benefit of all its favorable testimony." Reyes, 50 N.J. at 459. Finally, the Appellate Division has said that in Reyes motion appeals, reviewing courts "[are] not concerned with the worth, nature or extent" of the evidence, "but only with its existence, viewed most favorably to the State." State v. Speth,

323 N.J. Super. 67, 81 (App. Div. 1999). Thus, the testimony of Detectives DaSilva and Serrano must be taken as accurate by this Court.

If viewed under the general standard of appeal for bench trial verdicts, then, as Judge Teare found the officers to be credible, (Da13-15), and explained why she found them to be credible, that holding must be given deference. Locurto, 157 N.J. at 474. Defendant attempts to challenge the credibility of Detectives DaSilva and Serrano, arguing that they gave differing answers for why they were assigned to that area, with Detective DaSilva discussing recent shootings as the reason and Detective Serrano discussing narcotics activity in the area. (Db4, Db21). However, defendant mischaracterizes the detectives' testimony.

Detective DaSilva testified that they had been assigned to the area due to recent violent crime in the area, and he specifically noted two recent shootings. (3T26-24 to 27-5). Detective Serrano testified that they conducted proactive "enforcements in areas within the City of Newark that are unfortunately plagued with shootings and heavy narcotic activity." (3T152-15). Later, Detective Serrano was asked on cross-examination if they were in that area due to an "influx of complaints about narcotics activity" to which he responded in the affirmative. (3T181-22 to 182-4). The testimony shows no contradiction. Detective Serrano first mentioned both the shootings and narcotics activity, his

later answer that the narcotics were the reason they were there, when he was only asked about the narcotics, does not mean that the shootings were not also a reason they were assigned to that area. There is no error in the credibility findings made by Judge Teare. Thus, this Court must give deference to those credibility findings. With that baseline established, the State moves to address the merits of the State's argument.

The defendant's argument is that Judge Teare was incorrect in her interpretation and application of Crawley in finding that the officers were acting in good faith. In order to judicate the merits of this argument, the first step is to look at the facts of the case as per the credible evidence introduced at trial.

The detectives were assigned to an area that had experienced multiple recent shootings. (3T26-25 to 27-5). They saw a group of men as they were driving and they noticed defendant take a step back and appear startled by their presence which drew their attention. (3T32-8 to 10, 33-13 to 15). They then noticed defendant begin to look around as if looking for an escape route. (3T34-11 to 13, 80-21, 155-11). They saw the defendant move his shoulder bag slowly away from the vantage point of the detectives as if to hide it from them. (3T34-14 to 16). Additionally, they saw Jasper Spivey move away from the group, and based on their experience with gun recoveries, they were aware of a tactic where one individual would walk away from the group to distract officers. (3T127-17

to 128-1). At that point, based on their experience recovering firearms from shoulder bags, (3T130-10 to 131-3), the detectives decided to exit the vehicle and investigate, (3T34-18), however, as soon as they exited the vehicle and announced themselves as police[12] (3T36-19 to 20, 158-8 to 9), defendant again moved to place his body between Detective DaSilva and the shoulder bag. (3T35-16 to 20). At that point, Detective DaSilva moved in to recover the bag, fearing that it contained a firearm and wanting to secure the scene, and in doing so, he felt a firearm in the bag. (3T37-1 to 14, 106-7 to 11, 107-1 to 3). In response, defendant, Branden Rodwell, and Jasper Spivey assaulted the officers and obstructed their good faith efforts to investigate and then arrest the defendant and secure the scene. (3T38-15 to 63-12).

In defeating a Reyes motion, all that is necessary is that sufficient facts exist in the record for a reasonable jury to be able to find guilt beyond a reasonable doubt. In a generalized appeal from a bench trial verdict, the question is whether Judge Teare's finding of guilt is "so manifestly unsupported by or

[12] The State reiterates that as Detectives DaSilva and Serrano testified that Detective DaSilva announced himself as a police officer "[a]s [he] was exiting the vehicle" and approached defendant. (3T36-19 to 20, 158-8 to 9), and as under the Reyes standard the State is given all reasonable inferences, the testimony of the detectives as to the fact that they did announce their identity as police must be taken as true regardless of what Judge Teare ruled below on the issue. (Da12). However, if Judge Teare's finding as to that matter is to be given deference, it is immaterial to the fact that the officers were acting in good faith.

inconsistent with the competent, relevant and reasonably credible evidence" such that a reversal is warranted. The defendant's appeal fails under both standards. If one simply looks at the wording of Crawley, it is clear that the officers here acted in good faith. "[A] police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith." Crawley, 187 N.J. at 461. The officers here had a basis and were not acting arbitrarily. To explain why that is the only possible conclusion, the caselaw as to "good faith" must be elaborated upon.

To establish the that a public servant was "[l]awfully performing an official function" the State must prove that a police officer was "acting in objective good faith, under color of law in the execution of his duties." Crawley, 187 N.J. at 460-61. Crawley further held that "[a]mong other things, good faith means 'honesty in belief or purpose' and 'faithfulness to one's duty or obligation.'" 187 N.J. at 461. This is distinguished from "a police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith." Id. at 461.

In arguing that Judge Teare's holding that the officers acted in good faith was incorrect, the defendant cites to several cases in which courts have found that the good faith requirement was met and attempts to distinguish them from the instant fact pattern. (Db31-37). Defendant argues that "unlike in [prior

cases], the police were not acting in good faith or under color of law. The police had not received any sort of specific tip or information from dispatch that drew them to this particular address. They did not have any information that a particular person had done anything criminal, nor a description of any person they were looking for…Thus, unlike in Crawley and [State v. Williams, 192 N.J. 1 (2007)], the officers were not reasonably relying on information from headquarters to respond to an emergency or public safety threat." (Db36-37). However, Crawley plainly does not stand for the principle that officers must be relying on information from headquarters to be acting in good faith.

Defendant additionally cites to State v. Nyema, "nervous behavior or lack of eye contact with police cannot drive the reasonable suspicion analysis given the wide range of behavior exhibited by many different people for varying reasons while in the presence of police." 249 N.J. 509, 533 (2022) (citing State v. Rosario, 229 N.J. 263, 277 (2017)). The State concedes this is the law. However, while the State does not necessarily concede that the instant fact pattern falls afoul of Nyema, as there was more than just nervous behavior here; Defendant acted to move his bag out of the officers' field of view, he then moved to put his body between the officer and the bag when Detective DaSilva exited the vehicle, this entire discussion of Nyema is irrelevant to the issue before this Court because it applies to an entirely different area of law.

Nyema only stands for the preposition that nervous behavior or lack of eye contact with police cannot drive the reasonable suspicion analysis. It does not stand for the principle that if a stop is found to have been predicated on nervous behavior or lack of eye contact with police, or, that if a stop is found to not have sufficient reasonable suspicion because the officers improperly relied on nervous behavior, that the officers conducting that stop were not acting in objective good faith, under color of law in the execution of their duties. In short, the reasonable suspicion analysis which Nyema helps govern is distinct from the good faith analysis at issue here. Precedent is clear "that a defendant may be convicted of obstruction under N.J.S.A. 2C:29-1 when he flees from an investigatory stop, despite a later finding that the police action was unconstitutional." Crawley, 187 N.J. at 460. Even if an officer's actions would fail a challenge to the validity of the officer's reasonable suspicion, that does not mean that the officers were not acting in good faith.

Objective good faith does not require that the officers correctly apply the law governing what constitutes reasonable suspicion. The State concedes that under recent caselaw, it is certainly possible that the officer's reasonable suspicion analysis could be insufficient to stand up to direct challenge. However, defendant seems to argue that if an officer acts without proper reasonable suspicion, or if he arrives at his belief that he has reasonable suspicion based on

a mistake of law, then he is not acting in good faith. In reviewing the defendant's arguments, it is difficult to say what he believes the difference is between a good faith analysis and a reasonable suspicion analysis. Defendant mistakenly conflates the two standards. This is made clear when he argues "[defendant]…certainly did not provide anything close to reasonable suspicion to conduct an investigatory stop…In short, the police had no valid reason for stopping their cars to approach the defendants." (Db39). This is a reasonable suspicion argument, not a good faith argument. Crawley clearly says that a distinction between the two analyses exists, however, defendant hangs his argument on the idea that if the officers mistakenly forgot about Nyema in their reasonable suspicion analysis, then they weren't acting in good faith. That is not the law.

The State posits that the good faith standard, as applied to this fact pattern, requires that the officers act under an objectively good faith belief that they have reasonable suspicion, where they are able to identify specific actions on the part of a defendant which leads them to honestly believe that a crime has been committed, and then they act on that good faith belief in faithfulness to their duty or obligation. Thus, if an officer stops an individual on the street for no reason other than his race, or just because he "felt off", said officer cannot point to a specific action which motivated his suspicion for the stop, and that would

fail both the reasonable suspicion test and the good faith test. That was not the case here.

Here, the officers clearly had a basis for their reasonable suspicion. They explained that basis in excruciating detail at trial as laid out above. Further, during cross-examination, Detective DaSilva was directly asked on cross-Examination if he believed he had reasonable suspicion here, and he replied "[y]es, I did." (3T131-1 to 3).

The officers acted with honesty in belief and purpose, they saw things which, based on their experience, led them to believe that defendant was carrying a firearm in his shoulder bag and acted accordingly. To do otherwise would have been faithless to their duty and obligation to protect the public. They acted in keeping with the dictates of Crawley. They did not act arbitrarily. They did not act based on the defendant's race or any other protected characteristic. They made observations of concrete and individualized acts which raised reasonable suspicion of a particular crime. They believed they had reasonable suspicion, and then they acted accordingly. Under any rational reading of the events of the incident, the State presented enough evidence that a reasonable jury could find that the officers acted in good faith in investigating their suspicion as to the defendant.

Defendant argues that "The police in this case wholly arbitrarily accosted [defendant]. Justin [Rodwell], and Jasper [Spivey] when they were doing nothing wrong or suspicious." (Db30). However, as seen above, the record clearly does indicate an objective basis for the officers' belief that defendant was in possession of a firearm. They testified as to the specific observations that motivated their suspicions. Just because the defendant believes he was doing nothing suspicious does not mean that the officers could not, in good faith, come to a different conclusion. Detective DaSilva was cross-examined on this issue. Defendant's counsel asked Detective DaSilva if his reason for stopping and investigating was "white shirt, looking around like he wants to escape from nothing, right?" (3T130-1). Detective DaSilva responded that there were more factors than that, noting that as the officers approached the defendant, "he moved his shoulder bag away from my vantage point, and as we [exited] the vehicle…he kept blocking me, maneuvering his body." (3T130-3 to 8). Officers were in an area with recent shootings and observed an active effort by defendant to hide the bag from their view which, based on their experience, was indicative of firearm possession, and certainly could be objectively interpreted as an attempt to hide some kind of contraband. Here, the officers observed conduct which their experience told them was in keeping with the conduct of those carrying firearms, they developed a suspicion that the shoulder bag defendant

was carrying had a firearm in it, they moved to investigate and as soon as they did, defendant acted in keeping with their suspicions by moving to further block the officers from the shoulder bag, further validating said suspicions. Objectively, Detectives DaSilva and Serrano acted in good faith.

In sum, the defendant repeatedly implies that the officers had no basis for stopping defendant. "[T]hey arbitrarily decided to flout all constitutional rules, illegally and dangerously accosting a group of men who had done nothing more than stand near their home." (Db2). "This was wholly arbitrary, nothing more than a random stop of a group of men who were doing nothing wrong or suspicious." (Db39). "When officers, for no reason, jump out of their cars and try to grab someone's bag, they do not act in good faith." (Db40). "They were fishing, not acting in good faith." (Db37). The defendant's argument on appeal boils down to basically just repeating the word "arbitrary" and claiming that the defendant was "doing nothing suspicious" in the hopes that if he says it enough times, this Court will ignore the clear and credible evidence elicited by the State as to the clearly expressed non-arbitrary basis for the officers' actions.

The defendant cites to Williams where our Supreme Court held that when officers "arbitrarily detain" young men without any objective reasonable suspicion, that falls outside of the purview of the obstruction statute. Williams, 192 N.J. at 13. However, the key word there is arbitrary. The word "arbitrary"

is defined in the Miriam-Webster dictionary as "existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will." These officers did not drive down the street, see a group of black men standing there and say "let's see what we can find". They were not fishing, they were patrolling. As seen in the testimony of Detectives DaSilva and Serrano, their decision to stop and investigate the defendant and co-defendants was not random or by chance or as a capricious and unreasonable act of will. They made specific concrete observations which raised suspicion of criminality, and they acted based on how their duty demanded.

Defendant's reliance on State v. Goldsmith, 251 N.J. 384, 403 n.6 (2022), and Nyema is misplaced. In stressing the argument that the defendant was not doing anything suspicious and repeatedly raising cases directly implicating, not issues of good faith, but rather, reasonable suspicion, he directly contravenes our Supreme Court's decision in Crawley. "We need not resolve whether the investigatory stop in this case met that constitutional standard because, ultimately, we conclude that under N.J.S.A. 2C:29-1 a police officer…may be 'lawfully performing an official function' even if a court later determines that reasonable suspicion was lacking to justify the stop." Crawley, 187 N.J. at 451. The defendant seems to ask this Court to opine on whether the officers fell afoul of the limitations on reasonable suspicion outlined in Nyema, however, that is

beyond the purview of this appeal, the only issue before this Court is whether the State proved beyond a reasonable doubt, considering all the evidence in the light most favorable to the State, that the officers were acting in objective good faith. The issue of whether the officers had reasonable suspicion to justify the stop is not before this Court.

In Williams, our Supreme Court held that, "defendant was obliged to submit to the investigatory stop, regardless of its constitutionality. Instead, defendant physically resisted the pat down…[i]n obstructing the officers, defendant committed a criminal offense…" 192 N.J. at 10. In State v. Reece, our Supreme Court held that "[a] suspect is required to cooperate with the investigating officer even when the legal underpinning of the police-citizen encounter is questionable." 222 N.J. 154, 172 (2015). In Crawley, our Supreme Court held, "a person has no constitutional right to endanger the lives of the police and public by fleeing or resisting a stop, even though a judge may later determine the stop was unsupported by reasonable and articulable suspicion." 187 N.J. at 458. The State also notes that the Supreme Court in Crawley cited to United States v. Bailey, where the Eleventh Circuit held that, "where the defendant's response [to police action] is itself a new, distinct crime, there are strong policy reasons for permitting the police to arrest him for that crime. A contrary rule would virtually immunize a defendant from prosecution for all

crimes he might commit that have a sufficient causal connection to the police misconduct." Crawley, 187 N.J. at 459 (citing United States v. Bailey, 691 F.2d 1009, 1017 (11th Cir. 1982)). Regardless of what motivated the initial police action, the defendant purposely obstructed the administration of law by assaulting officers to prevent them from lawfully performing an official function, namely investigating Jaykil Rodwell. N.J.S.A. 2C:29-1(a). The law is clear, regardless of how the defendant felt about the way the encounter began, he should have allowed the officers to conduct their investigation and then, if appropriate, challenge their conduct through the courts.

Defendant discusses at length the history of racial discrimination in the Newark Police Department. (Db40-45). He cites to a United States Department of Justice report on the issue, he cites statistics and data. The purpose of this focus on the history of racial discrimination in the Newark Police Department is stated outright in defendant's brief. He posits that "[t]he officers' actions in this case must be viewed in light of this history of unconstitutional policing by the Newark police, and particularly the "stark and unremitting" effect of these unconstitutional stops on Black men living in Newark." (Db40). However, while racial discrimination is a serious issue in the United States, especially as it pertains to policing, defendant brings no evidence that such issues are at play in this case, in the actions of these officers. None. He merely speculates that it is

based on his conclusory and incorrect assertion that there was no other basis for the stop other than the race of the defendants.

At trial, when the defendant attempted to press this issue, he relied on an incident report prepared, not by Detective DaSilva or any other officer who was at the scene, but rather on a report prepared by another officer, Sergeant Luis Rivera. (3T78-6). This report was prepared pursuant to a department policy that because Detective DaSilva was choked during the melee, he is a victim, and so a separate officer had to complete a report. (3T140-7 to 12).

Detective DaSilva was cross-examined on this report, and he testified that it was inaccurate. Detective DaSilva testified that, "Sergeant Rivera was not on scene, and he came on the scene after everything occurred, and I responded to the hospital. So he only had a brief of what was going on…he did not know what happened because he was not on the scene." (3T122-13 to 20). When asked if Sergeant Rivera left some details out of his report, Detective DaSilva answered "Yes, he did." (3T123-3 to 5). Detective DaSilva further testified that he never discussed with Sergeant Rivera whether said report was accurate or asked him to correct his report because he prepared his own report. (3T123-6 to 8, 140-13 to 17). Detective DaSilva was asked on cross-examination if "seeing [defendant] is what prompted you to exit the vehicle and further investigate?" He responded "[n]o, there's other behavior factors just for me to exit the vehicle." (3T77-7 to

10). Thus, testimony was elicited at trial that the report on which defendant relied on to show racial motivation for the stop and encounter was not accurate in describing what motivated Detective DaSilva to initiate the encounter. If defendant cannot show that there was a racial motivation for this stop, then these arguments and citations are irrelevant.

Based on the above, under any standard this Court can apply, the defendant's appeal must be denied, and the judgment of conviction must be affirmed. If judicated under Reyes, in viewing the State's evidence in its entirety and giving the State the benefit of all favorable inferences which reasonably could be drawn there from, it is clear that a reasonable jury could find guilt of the obstruction charge beyond a reasonable doubt. Reyes, 50 N.J. at 458-59. The officers did not act arbitrarily; they did not act based on the defendant's race. It is plain that enough evidence exists in the record for a reasonable jury to find that the officers acted in good faith and therefore, that the defendant could be convicted of the charge of obstruction. Under the more general standard, the defendant has completely failed to show that Judge Teare's factual findings were inconsistent with the credible evidence introduced at trial, and a de novo review of Judge Teare's legal conclusion that the officers were acting in good faith gives no grounds to reverse her determination. Therefore, this Court must affirm the judgment of conviction.

Conclusion

The defendant attempts to deputize the ongoing discussion in this country about racial justice and policing into his argument. He attempts to frame himself as a mere victim of racially motivated policing. He attempts to place his case in discussion with cases like George Floyd. In spite of the defendant's attempt to spin what happened as a couple of racist cops accosting young African-American men for no reason other than the color of their skin, the truth stands clear and is exactly what Judge Teare found. Officers, trained and experienced in gun crime, observed conduct consistent with previous examples of individuals who were carrying firearms. They went to investigate those individuals based on said observations and were assaulted by the subject of their investigation and his relatives in a desperate bid to prevent the officers from retrieving incriminating evidence. The defendant's challenge to that truth does not hold water. The State proved every element of the charged crime. The State proved that the defendant committed an affirmative act of flight, they proved that he did so for the purpose of fleeing the officers' attempt to investigate him or take him into custody, and they proved that in fleeing the defendant obstructed the administration of law. The State additionally proved that Detectives DaSilva and Serrano were lawfully performing an official function as defined in the law in investigating the defendant. The trial court's minor mistaken findings of fact in

its written decision do not change the fact that the evidence showed that the defendant committed an act to obstruct the officers. The trial court properly considered and rejected the defendant's self-defense claim as it found that the defendant did not have a reasonable belief that the officers were acting as private individuals. Under the Reyes standard, it is clear that a reasonable jury could find, giving the State the benefit of all inferences, that the officers were acting in good faith. Additionally, Judge Teare's legal conclusions were adequately supported by and consistent with the evidence presented at trial, including but not limited to the testimony of Detectives DaSilva and Serrano. Therefore, this Court must affirm.

Respectfully submitted,

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT

s/Shep A. Gerszberg
No. 442502023
Assistant Prosecutor
Of Counsel and on the Brief

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

JENIFER N. SELLITTI
Public Defender

January 13, 2025

NADINE KRONIS
ID. NO. 404802022
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-2961-23T2
INDICTMENT No. 21-09-1649-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior
v.	:	Court of New Jersey, Law Division, Essex County.
JAYKIL A. RODWELL A/K/A JAYKIL RODWELL	:	
Defendant-Appellant.	:	Sat Below: Hon. Siobhan A. Teare, J.S.C.

Your Honors:

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

DEFENDANT IS NOT CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Jaykil Rodwell relies on the procedural history and statement of facts from his initial brief.

LEGAL ARGUMENT

Jaykil Rodwell relies on his opening brief, and adds the following:

POINT I

THE OBSTRUCTION CONVICTION MUST BE VACATED BECAUSE IT IS BASED ON INCORRECT FACTUAL FINDINGS.

On appeal, the State concedes that the trial court erred in finding that Jaykil threw his fanny pack to his brothers and that Jaykil fled together with Jasper and the fanny pack. (Sb 19-20) The State agrees that the body camera footage does not show Jaykil throwing the fanny pack to anyone, and that Ranges never testified that he saw Jaykil fleeing with Jasper. Yet, the State now claims that the trial court would have found Jaykil guilty of obstruction regardless of whether it made these mistaken factual findings or not. (Sb 20) This argument is entirely meritless and must be rejected.

The trial court relied heavily, if not exclusively, on the very factual findings that the State admits are incorrect in convicting Jaykil of obstruction. (Da 17-18) Both of the factual findings that the State now concedes are incorrect provided key evidentiary support for the court's conclusion that Jaykil

deliberately made away with the fanny pack with the purpose of obstructing a police investigation.

The trial court's erroneous factual findings cannot be harmless where there is a real possibility that the errors led to an unjust result. See State v. Macon, 57 N.J. 325, 336 (1971). It is evident that these erroneous factual findings were central to the trial court's ruling, and there is a real possibility that the court would have acquitted Jaykil had it made proper factual findings supported by the record. Thus, Jaykil's obstruction conviction must be vacated.

POINT II

THE OBSTRUCTION CONVICTION MUST BE VACATED AND A JUDGMENT OF ACQUITTAL ENTERED BECAUSE THE STATE DID NOT MEET ITS BURDEN OF PROVING THAT JAYKIL FLED WITH THE PURPOSE OF OBSTRUCTING AN INVESTIGATION AND FAILED TO DISPROVE JAYKIL'S SELF-DEFENSE CLAIM.

This court should reject the State's invitation to decline to reach the merits of the appeal. Jaykil maintains that, because the trial court had an obligation to enter a judgment of acquittal "on its own initiative" if the evidence was insufficient for the State to prove each element beyond a reasonable doubt, R. 3:18-1, this Court should perform a de novo review of whether the State proved the elements of obstruction beyond a reasonable doubt. State v. Williams, 218 N.J. 576, 593-94 (2014).

Trial defense counsel asked the trial court to acquit Jaykil of obstruction; defense counsel simply did so in her closing argument instead of in a formal motion immediately preceding her closing argument. Jaykil's counsel argued in summation that the court should acquit Jaykil because he fled the scene to defend himself from an assault that he had "no reason to know [was] an arrest," rather than for the purpose of obstructing an investigation – the same argument that is being raised on appeal. (5T:48-4 to 7, 56-24 to 58-19) Defense counsel also filed a notice informing the court that Jaykil would be raising the affirmative defense of self-defense. (Da 20-21) It would be a complete miscarriage of justice for an appellate court to refuse to consider whether the State had proven defendant's guilt beyond a reasonable doubt simply because defense counsel did not formally move for a judgment of acquittal. See R. 2:10-2 ("[T]he appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court.").

At bottom, regardless of what standard of review is applied, the question boils down to whether the State's evidence could reasonably be construed to establish the elements of obstruction beyond a reasonable doubt. The State failed to meet its burden of proving that Jaykil fled with the purpose of obstructing a police investigation, and it failed to meet its burden of disproving Jaykil's affirmative defense of self-defense beyond a reasonable doubt.

First, the State failed to meet its burden of proving that Jaykil fled with the purpose of obstructing a police investigation, rather than with the purpose of protecting himself from an assault that he had no reason to believe was an arrest, a temporary detention, or any other official police function. To prove that Jaykil acted with the purpose of obstructing a police investigation, the State had to demonstrate that Jaykil was aware that the officers were attempting to temporarily detain him, search his fanny pack, or arrest him when he fled from them. See Model Jury Charges (Criminal), "Obstructing Administration of Law or Other Governmental Function" (N.J.S.A. 2C:29-1) (rev. Oct. 23, 2000). ("A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist.")

The State claims that Jaykil "was aware that he was the primary subject of the officers' investigation" based on the officers' "implicit instructions … that he was the subject of an investigation and was to be taken into custody," as well as from DaSilva's generalized mid-melee instruction to stop, which was presumably directed to "all parties." (Sb 22-23) However, it is undisputed that DaSilva began the interaction with Jaykil by approaching Jaykil from behind and immediately grabbing him and his fannypack without announcing any intention to stop or search him. Indeed, DaSilva testified that he intentionally

did not tell Jaykil anything before grabbing him in order to introduce "a little element of surprise." (3T:140-23 to 141-5) The officers also never announced their intention to take Jaykil into custody. (3T:114-23 to 115-9) Therefore, acquittal is required because no reasonable factfinder could conclude that the State proved, beyond a reasonable doubt, that Jaykil was aware that the officers were attempting to detain, search, or investigate him when he fled.

The State correctly acknowledges that "the trial court was obligated to consider [Jaykil's] self-defense claim" where Jaykil notified the court that he would be raising the affirmative defense of self-defense. (Sb 24) Thus, the trial court was required to determine whether the State had disproved, beyond a reasonable doubt, Jaykil's claim that he honestly and reasonably believed that the officers were assaulting him rather than temporarily detaining him to investigate his fanny pack or performing any other official function. See State v. Macchia, 253 N.J. 232, 252 (2023) (holding that once evidence of self-defense is introduced, State must "prove beyond a reasonable doubt that the self-defense claim does not accord with the facts," or acquittal is required.) (internal quotations omitted).

Instead, the court failed to mention self-defense in its decision altogether. The State argues that the court implicitly considered and rejected Jaykil's self-defense claim by finding that "defendants knew that [] DaSilva and [] Serrano

were law enforcement officers that were attempting to investigate Jaykil." (Sb 25-26, quoting Da 16) Regardless of whether this single sentence from the trial court's decision amounts to a consideration and rejection of Jaykil's self-defense claim, the State failed to carry its burden of disproving his self-defense claim. What the State calls the police officers' "implicit instructions … that [Jaykil] was the subject of an investigation" amount to nothing more than the police officers jumping out of an unmarked car, grabbing Jaykil and his bag without communicating any intention to stop or search him, and trying to physically pull Jaykil away from his brothers. (Db 7-9) The State failed to disprove beyond a reasonable doubt Jaykil's claim that he acted in self-defense based on his reasonable belief that the officers were assaulting him rather than acting in their official capacity. Thus, acquittal is required.

CONCLUSION

For the reasons set forth here and in Jaykil's initial brief, this Court should vacate Jaykil's conviction for obstruction and enter a judgment of acquittal.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: s/Nadine Kronis
Assistant Deputy Public Defender
Attorney ID: 404802022

Dated: December 28, 2024