SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2967-23

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.
JASPER D. SPIVEY a/k/a JASPER SPIVEY,	:	Indictment No. 21-09-1649-I
Defendant-Appellant.	:	Sat Below:
	:	Hon. Siobhan A. Teare, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Almost exactly one year after police officers murdered George Floyd, three plainclothes Newark police officers jumped out of two unmarked cars and accosted a group of Black men, all brothers, standing on the street near their home. An officer, who failed to turn on his body-worn camera before the incident, immediately grabbed a fanny pack worn by one of the men. The men, defendant-appellant Jasper Spivey and Justin and Jaykil Rodwell, reacted to the police's flagrantly unconstitutional, arbitrary, and racist actions, and a melee ensued, with their brother Branden Rodwell also getting involved.

Following a bench trial, the trial court acquitted the men of resisting arrest and assault but convicted them of obstruction. But Jasper Spivey and the other men could not be convicted of obstruction because even when viewing the evidence in the light most favorable to the State, the police did not initiate this encounter in good faith. Instead, they arbitrarily decided to flout all constitutional rules. They illegally and dangerously accosted a group of men who had done nothing more than stand near their home. Because the State did not, and cannot, prove an essential element of obstruction -- that the police were acting in good faith -- Jasper Spivey's conviction should be vacated and a judgment of acquittal entered.

PROCEDURAL HISTORY

On September 3, 2021, an Essex County Grand Jury returned Indictment No. 21-09-1649-I, charging defendant-appellant Jasper Spivey with: three counts of third-degree aggravated assault on a law enforcement officer, N.J.S.A. 2C:12-l(b)(5)(a) (Counts 1-3); one count of fourth-degree obstruction, N.J.S.A. 2C:29-1 (Count 4); and one count of third-degree resisting arrest by force, N.J.S.A. 2C:29-2(a)(3)(a) (Count 8). (Da1-9)[1] Additionally, the indictment charged Branden Rodwell, and Justin Rodwell,[2] with Counts 1-4 and one count of third-degree resisting arrest by force each (Counts 5, 6, and 8). (Da1-9) On September 14, 2022, all charges were downgraded to disorderly persons offenses: three counts of simple assault, N.J.S.A. 2C:12-1(a) (Counts 1-3); one count of obstruction, N.J.S.A. 2C:29-1 (Count 4); and one count of resisting arrest, N.J.S.A. 2C:29-2(a)(1) (Count 6). (Da11)

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[1] Da -- Defendant-Appellant's Appendix
1T -- Motion Transcript -- April 28, 2022
2T -- Conference Transcript -- January 10, 2024
3T -- Trial Transcript -- March 20, 2024 (Vol. 1)
4T -- Trial Transcript -- March 20, 2024 (Vol. 2)
5T -- Trial Transcript -- March 21, 2024
6T -- Sentencing Transcript -- April 23, 2024.

[2] Because Justin, Branden, and Jaykil Rodwell all share the same last name, this brief refers to all defendants by their first names to avoid confusion.

On March 20 and 21, 2024, the Honorable Siobhan A. Teare, J.S.C., presided over a bench trial for all four defendants. (3T-5T) 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) That same day, Judge Teare sentenced all defendants to fines and fees only. (Da20-23; 6T 16-4 to 8; see also 6T 7-10 to 12 (Jaykil); 11-4 to 9 (Justin); 6T 13-3 to 19 (Branden)). A notice of appeal was filed on Jasper's behalf on May 29, 2024. (Da23-26).[3]

[3] Each 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
Jaykil A. Rodwell A-2961-23

STATEMENT OF FACTS

At around 1:30 p.m. on June 1, 2021, brothers Justin Rodwell, Jaykil Rodwell, and Jasper Spivey were sitting outside Justin's mother's home at 62-64 Cypress Street in Newark. (Da12; 3T 21-7 to 12) At the same time, Newark Police Detectives Michael DaSilva and Christopher Serrano and Essex County Prosecutor's Office Lieutenant Paul Ranges were driving through the neighborhood. (Da12; 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 and DaSilva were in a black Ford Crown Victoria and Ranges was in 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 during roll call. (3T 24-20 to 25-1, 152-19 to 23) DaSilva testified that he and the other officers went to 62-64 Cypress Street because there had been two shootings "in the immediate area" in the preceding weeks. (3T 26-25 to 27-5; Da12) In contrast, Serrano testified that they were in the area because of complaints of narcotics 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 from 62-64 Cypress Street, he "saw a group of males," -- Justin, Jasper, and Jaykil -- and his "attention was drawn to Jaykil." (3T 32-8 to 16, 333-13, 154-22 to 24, 155-2 to 5)

DaSilva was wearing a body-worn camera (BWC) and knew he was required to activate it before interacting with a civilian. However, DaSilva did not activate his BWC when he first saw Jaykil nor when he exited the car. (3T 86-10 to 87-1, 105-10 to 12) Although Serrano did activate his BWC when the incident began, his BWC was destroyed and no video was recovered. (3T 158-16 to 25, 169-4 to 6, 174-21 to 24, 186-19 to 20; 4T 217-23 to 218-1, 251-16 to 19, 251-22 to 252-3) Therefore, there is only DaSilva's BWC video -- without audio -- of the beginning of the incident. (3T 93-13 to 21) As the trial court found, "[b]y not turning on his [BWC] at the time [DaSilva] left his vehicle, critical evidence was lost." (Da12)

Using nearly identical language, both DaSilva and Serrano testified that, despite the fact that the officers were in civilian clothing in unmarked cars, Jaykil "took like a step back, and he became startled with our presence." (3T 33-14 to 15 (DaSilva); compare 3T 155-11 to 18 (Serrano testifying that Jaykil "noticed our [unmarked] police vehicle" and then "appeared startled" and "took a couple of steps back")) 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 BWC video recorded Jaykil in this moment as the officers approached, it does not show Jaykil looking around as the officers claimed. (3T 82-20 to 24; Da26 at 1:25-1:38)[4] Moreover, although DaSilva believed that Jaykil was looking to "escape," DaSilva admitted on cross-examination that Jaykil did not walk away, run away, or go into his nearby home. Instead, Jaykil stayed where he was as the officers in civilian clothing pulled up in unmarked cars. (3T 83-13 to 24)

DaSilva further testified that he noticed that Jaykil "had a shoulder bag" and "move[d] the shoulder bag away from [his] vantage point." (3T 34-14 to 16) But again, while the BWC video shows Jaykil in this moment as the police approach, it does not show Jaykil move the shoulder bag away from DaSilva's vantage point. (3T 100-17 to 23; see Da26 at 1:25-1:45) Furthermore, Ranges testified that he had no idea why he and the other officers stopped. (4T 222-14 to 17, 234-21 to 23)

[4] In the video, Justin is wearing orange (3T 98-24 to 99-1), Jaykil has long dreadlocks (3T 77-5 to 6), and Jasper is wearing a black and white shirt and blue jeans. (3T 193-12 to 14)

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 a police officer "[a]s [he] was exiting the vehicle" and approached Jaykil. (3T 36-19 to 22, 158-8 to 15) However, because DaSilva failed to activate his BWC camera, there is no independent evidence to corroborate this claim. (3T 114-23 to 115-9) As the trial court found, "nowhere has it been established that the officers[] identified themselves and announced their presence." (Da12)

DaSilva approached Jaykil and immediately grabbed his shoulder bag. (Da12; 3T 107-12 to 14; 4T 235-21 to 24; Da26 at 1:35-1:49) Before grabbing the bag, DaSilva did not ask Jaykil if he could speak with him, nor if he could see Jaykil's bag. (3T 84-10 to 23) As DaSilva grabbed the bag, he also grabbed Jaykil's left arm "to place him under arrest." (3T 85-2 to 6, 159-1 to 5) However, DaSilva admitted that he did not say anything to Jaykil or announce that he was placing Jaykil under arrest. (3T 85-10 to 17) In fact, there is nothing on the BWC video demonstrating that any officer announced 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, there

is no independent evidence to corroborate this claim. Although Serrano and Ranges testified that DaSilva announced the presence of a gun, DaSilva admitted on cross-examination that the BWC 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 also Da26) Moreover, while DaSilva testified at trial that there was a gun in Jaykil's shoulder bag, DaSilva can be heard in the BWC video following the incident saying that "the guy in the orange" -- Justin -- had the gun, not Jaykil. (3T 117-20 to 24; Da26 at 4:00-4:10) And the shoulder bag was never recovered. (3T 60-9 to 17)

After DaSilva grabbed Jaykil's bag, "that's when Jaykil started like -- started resisted, started pushing" and "started to . . . run towards Detective Serrano and Lieutenant Ranges." (3T 38-13 to 18, 159-8 to 11; see also 4T 213-24 to 214-5) Around the same time, Justin pushed DaSilva toward a van parked nearby and, with Jasper, pulled his brother Jaykil away from Serrano and Ranges. (Da12; 3T 45-1, 47-11 to 18, 161-17 to 162-2; 4T 213-24 to 214-5) After being pushed, DaSilva finally turned on his BWC. (3T 93-13 to 21) Then, as the trial court found, "a melee ensued." (Da12)

During the "commotion," DaSilva took the shoulder bag and secured it around his neck before Jasper "wrestled" it from him. (Da12; 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 BWC 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. (Da12; 3T 54-11 to 20, 164-8 to 13) Once again, however, there is no independent evidence to corroborate this claim. As reflected on the BWC footage, DaSilva again did not announce to his fellow officers that he felt a gun. (Da26 at 2:15 to 2:45). DaSilva testified that Jasper put him in a "choke hold" and then Serrano punched Jasper in the face. (3T 55-7 to 23, 165-18 to 22)

Serrano testified that right after he punched Jasper in the face, Branden Rodwell "tackled" him.[5] (3T 166-15 to 17) Branden was not there when the officers first arrived and did not get involved until Serrano punched Jasper. (3T 183-2 to 12; 183-20 to 184-2, 184-3 to 7) Serrano fell to the ground and there "was kind of like a big pile up on the ground." (3T 167-9 to 10)

Ranges testified that he lifted Branden off Serrano's back and put Branden in a "bear hug." (4T 215-18 to 23, 216-3 to 7, 238-1 to 10) Serrano testified that Jasper then grabbed the shoulder bag. Serrano tried to take the bag from Jasper but "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" with the bag. (3T 56-1 to 7) Jaykil also left the scene.

[5] Branden is wearing a white shirt and red pants in the BWC video.

After Jasper and Jaykil left, DaSilva realized his BWC had fallen off and 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 BWC fall off again. (3T 64-2 to 3) At the same time, Ranges had Branden in "a bear hug." (3T 63-14 to 16) Serrano testified that he then went to help Ranges arrest Branden, who "wasn't compliant," but admitted on cross-examination that they never announced their intention to arrest Branden. (3T 167-21 to 168-3, 168-20, 185-20 to 24)

Ultimately, Newark Police Detective Darren Sinclair and his partner, Officer Gabriel Gonzalez, arrived and assisted in arresting Justin and Branden. (5T 5-16 to 9-19)

In addition to this evidence, the State introduced a video posted by Jaykil and Jasper to Jasper's Instagram account. (5T 16-18 to 25) In the video, Jaykil and Jasper explain that they "had an altercation yesterday" that "it got very violent from the police officers" who "did the wrong procedures." (5T 18-10 to 13) The video specifies that the police "didn't turn no cameras on or anything" and instead "just came and start yoking people up," and Jaykil and Jasper "didn't know what was going on." (5T 18-13 to 16) They explain that the shoulder bag contained rent money for their mother. (5T 18-16 to 21)

The text under the Instagram post says that the four men are innocent and "were harassed and beat on because the color of their skin. They literally was outside just talking on a regular day, and these cops come down yoking people up, not reading rights or nothing, saying they had a firearm." (5T 19-16 to 21) The post continues, "[y]ou can't even chill in your own community without PD trying to fake run down and disrespect you for BS." (5T 19-25 to 26)

After considering this evidence, the trial court acquitted Jasper of the simple assault charges because it was "impossible for the court to find beyond a reasonable doubt who cause[d] what assault on whom." (Da18) The court also acquitted Jasper of resisting arrest because he "was never placed under arrest, the police never announced their presence and once Jasper Spivey had obtained the fanny pack, he left the scene. He later turns himself in once he becomes aware that the police are looking for him." (Ibid.) However, the court convicted Jasper of obstruction because it found that he "was fully aware that officers were attempting to investigate" Jaykil and "Jasper Spivey began pushing and shoving officers during their investigation preventing them from successfully performing the arrest of Jaykil Rodwell." (Da19) The court further found that the "[o]fficers were acting in good faith and under the color of their authority because they believed that a gun was in the fanny pack" and that Jasper's "affirmative actions

interfered with and ultimately prevented law enforcement officers from performing their official duties." (Da19).

LEGAL ARGUMENT

POINT I

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. (Da15-19)[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. at 361-62 (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 protection of a defendant's basic constitutional rights." State v. Thomas, 132 N.J. 247, 253 (1993). Specifically, "the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses

[6] Although Jasper's counsel did not formally move for a judgment or acquittal, the trial court specifically ruled, with respect to Jasper's obstruction conviction, that the officers "were acting in good faith and under the color of their authority because they believed that a gun was in the fanny pack." (Da19). For the reasons discussed in this point, the issue of whether a judgment of acquittal should have been granted as a result of the State's failure to prove the good-faith element beyond a reasonable doubt is thus preserved for de novo review, or at the very least, must be reviewed for plain error.

charged . . . . if the evidence is insufficient to warrant a conviction." R. 3:18-1 (emphasis added).

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). 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). Here, the State failed to prove that the police officers were "lawfully performing an official function," N.J.S.A. 2C:29-1(a), such that a judgment of acquittal must be entered. See U.S. Const. amends. V, XIV, N.J. Const. art. I, ¶¶ 1, 10; Winship, 397 U.S. at 362-64.

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).

To establish 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." State v. Crawley, 187 N.J. 440, 460-61 (2006). 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, all four defense counsel argued in summation that the trial court should acquit the defendants of obstruction because the State could not prove, beyond a reasonable doubt, that the police officers acted in good faith under the color of law when they physically accosted the brothers without any reasonable suspicion of criminal activity. (5T59-12 to 65-10 (Jasper); see also 25-18 to 27-7; 34-10 to 16; 34-20 to 35-18; 42-16 to 46-21; 46-23 to 48-3). Accordingly, although Jasper's counsel did not formally move for a judgment or acquittal, the trial court specifically ruled, with respect to Jasper's obstruction conviction, that the officers "were acting in good faith and under the color of their authority because they believed that a gun was in the fanny pack." (Da19). A de novo

review of the record, even when viewed in the light most favorable to State, reveals that there was insufficient evidence for the trial court to find beyond a reasonable doubt that the police were acting in good faith and under the color of law when they physically accosted the brothers without reasonable suspicion and illegally instigated the incident. The trial court thus had an obligation, "on its own initiative," to enter a judgment of acquittal on the charge of obstruction. R. 3:18-1. Alternatively, this Court should review the trial court's failure to acquit Jasper of obstruction for plain error because convicting a 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.

The record discloses no objective basis for the officer's unfounded, bad-faith belief that the brothers were involved in criminal activity when officers jumped out of their cars and immediately accosted the men and attempted to seize the bag. The police officers in this case wholly arbitrarily accosted Justin, Jaykil, and Jasper when they were doing nothing wrong or suspicious. DaSilva, without turning on his BWC as required, immediately grabbed Jaykil and his bag without any valid cause. Jasper and Justin became involved after DaSilva, a stranger in civilian clothing who had just exited an unmarked car, grabbed their brother. The police's conduct in this case was so flagrantly unconstitutional, so far beyond what our law permits that it was not in good faith.

The officers' 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 (NPD) 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). Repeating the exact same type of illegal actions the Department of Justice (DOJ) warned the NPD against seven years earlier cannot be excused. The officers ought to have known better; they did not act in good faith. Thus, a judgment of acquittal on the obstruction charge should be entered.

The egregiousness of the police officers' 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, two police officers who were on patrol received a dispatch from headquarters "that a person was armed with a gun outside a bar." 187 N.J. 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 in a marked patrol car said, "Police. Stop. I need to speak with you." 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 our Supreme Court did not decide the issue, calling it a "difficult question." Id. at 443, 451. The Court recognized that a stop like this 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, therefore, the Court found that the officers acted in good faith. Id. at 461-62.

The Court similarly concluded that police officers were acting in good faith in State v. Williams, 192 N.J. 1 (2007). In that case, the officers on patrol in a marked police car received a dispatch at around 2:00 a.m. that "a black man

wearing a black jacket" was possibly selling drugs at a specific house in Elizabeth. Id. at 4-5. The house was in an area known to the officers as "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 house 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, our 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, it 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. (alteration in original) (quoting Crawley, 187 N.J. at 461 n.8).

Similarly, in State v. Reece, 222 N.J. 154 (2015), the police officers were clearly acting in good faith and under color of law when the emergency aid doctrine justified their entry into the defendant's home. In Reece, the officers responded to a dropped 9-1-1 call that originated from the defendant's house. Id. at 158. A uniformed officer who responded saw three cars in the driveway. Ibid. The officer knocked on the front door and asked the defendant if he made the 9-1-1 call. Id. at 158-59. The defendant denied making the call and insisted that he was alone. Id. at 159. The officer radioed for backup and confirmed with dispatch that the 9-1-1 call had come from the defendant's house 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 the defendant if he was married, the defendant responded that he was, but his tone became "frustrated." Ibid. The officer asked the defendant if he could enter the house and look around, but the defendant refused. Ibid. Two additional police officers arrived and told the defendant they "needed to check the house," but the defendant "slammed the door closed." Id. at 159-60. While the defendant was

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

In upholding the defendant's resulting conviction for obstruction, our Supreme Court first held that the officers' entry into the defendant's house was justified by the emergency aid doctrine. The Court explained that the dropped 9-1-1 call allowed the officers "to presume that there was an emergency," and that their subsequent observations -- the 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 the 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 police officers were allowed to break the door chain and enter a defendant's home under the emergency aid doctrine because of a concern for domestic violence, though vacating the 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 officers did not act in good faith or under color of law. The officers 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. The officers 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 their 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; Da12), 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 Jasper and the other men. The officers did not know any of the men. The officers had no description of anyone they were looking for; the officers had no reason to believe that the men "matched" some nonexistent description of a nonexistent suspect. And, the men were not doing anything out of the ordinary, let alone suspicious. They were simply standing outside their house in their own residential neighborhood, talking to one another. The fact that Jaykil was carrying an ordinary 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" added absolutely nothing to the nonexistent basis for the officers' actions here. (3T 33-14 to 15, 34-11 to 13, 155-11 to 18) In fact, the NPD'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.[7]

As our 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 further explained that nervousness or appearing startled cannot form the basis of a reasonable suspicion determination because police officers, and the State, cannot 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 -- whether they do nothing, something, or anything in between -- the behavior can be argued to be suspicious." Id. at 533-34.

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

Here, as in Nyema, the fact that the officers testified that Jaykil appeared 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 officers had no valid reason to stop their cars to approach Jasper and the other men. Unlike in Crawley and Williams, where police officers had specific information from dispatch about a specific suspicious person, the officers 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. What's worse, 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 subject to the Fourth Amendment and Article 1, ¶ 7, for which the police needed probable cause -- not just reasonable suspicion.

The egregiousness of the officers' rapid escalation of this illegal encounter forecloses the State from relying on DaSilva's testimony that he felt a gun in the

bag after he unlawfully seized it without probable cause to prove that the officers were acting in good faith and under the color of law at the time that Jasper attempted to reclaim the bag. To be sure, the trial court was entitled to credit DaSilva's testimony that he felt a gun in the bag. But when the police "arbitrarily detain" young men without any objective reasonable suspicion and aggressively seize their property without any probable cause, those illegal actions are "outside of the purview of the obstruction statute." Williams, 192 N.J. at 13 (quoting Crawley, 187 N.J. at 461 n.8). As such, the record provides insufficient support for the trial court to find, beyond a reasonable doubt, that Jasper's "affirmative actions interfered with and ultimately prevented law enforcement officer from performing their official duties." (Da19) Contrary to the trial court's erroneous legal reasoning, the State cannot rely on information gained from an egregiously unlawful seizure to transform these officers' bad-faith, objective constitutional violations into official functions performed in good faith and under the color of law.

In sum, the officers' actions here were flagrantly unconstitutional, in contrast with the close calls in Crawley and Williams, and the affirmatively constitutional actions in Reece. When police officers act with such clear disregard of the most basic constitutional principles, they cannot be said to act in good faith. When officers, for no reason, jump out of their cars and try to grab

someone's bag, they do not act in good faith. These officers were not acting in good faith, and therefore Jasper and the other men 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 NPD 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 DOJ investigated the NPD "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). 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." Id. 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's 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 DOJ 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 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 NPD 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 like this case, NPD 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 NPD'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 NPD "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 DOJ 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. Moreover, 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 NPD, 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 is repeated here. The officers here jumped out of their unmarked cars, without turning on their body cameras, all because a group of Black men were standing outside their home in Newark, and one of the men appeared startled by unmarked police cars. Cf. Id. at 9-10. The DOJ wrote a scathing report emphasizing the unconstitutionality of this kind of stop back in 2014. When the officers here 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 DOJ entered into a consent decree with the city of Newark because of stops exactly like this one is bad faith. The officers' 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. Given the State's failure to prove this element of obstruction, Jasper's conviction must be vacated and a judgment of acquittal entered.

CONCLUSION

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

Respectfully submitted,

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Dated: November 4, 2024

STATE OF NEW JERSEY, Plaintiff-Respondent, v. JASPER D. SPIVEY A/K/A JASPER SPIVEY, Defendant-Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2967-23 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

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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, Justin Rodwell and Jasper Spivey, defendant. Detective DaSilva noticed that Jaykil Rodwell 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 noticed that Jaykil Rodwell noticed their police vehicle, immediately stopped talking and appeared startled. Specifically, he noticed Jaykil Rodwell 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 noticed Jaykil Rodwell take a couple steps back and maneuver his head in multiple directions.[3] Further, Officer DaSilva noticed defendant 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 Jaykil Rodwell 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 Jaykil Rodwell 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 Jaykil Rodwell. (3T157-11 to 158-6). Detectives DaSilva and Serrano both testified that Detective DaSilva identified himself as a police officer, however, as Detective DaSilva

[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).

did not turn on his body worn camera, there is no video evidence of this declaration. (3T95-4, 131-11 to 14, 158-8).

As Detective DaSilva approached Jaykil Rodwell, Jaykil Rodwell 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 Jaykil Rodwell and defendant, that the bag contained a firearm and based on a fear that Jaykil Rodwell could quickly retrieve the firearm if he asked Jaykil Rodwell to turn over the shoulder bag, Detective DaSilva moved to grab the shoulder bag.[4] (3T 44-1, 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. (Da26 1:41-1:48). Further, he did not lunge for the bag, he moved around Jaykil Rodwell 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). Additionally, he grabbed Jaykil Rodwell's arm to place him under arrest, however, he did not inform Jaykil Rodwell 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. (Da26).

Jaykil Rodwell 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 Jaykil Rodwell and at that point Justin Rodwell and the defendant began attacking the officers to prevent them from arresting Jaykil Rodwell. They physically attempted to push the officers off Jaykil Rodwell. (3T162-14). 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 repeating saying "stop." (3T50-4 to 51-10). Defendant then approached Detective DaSilva, looking at the shoulder bag. (3T52-3 to 21). Defendant 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). Defendant then attempted to take the shoulder bag from Detective DaSilva again. (3T58-18). During this attack, Defendant placed Detective DaSilva in a choke hold and began choking him. Detective Serrano

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

Immediately after defendant 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, defendant 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). Defendant managed to escape with the shoulder bag. (3T167-19). Jaykil Rodwell also left the scene. (Da12, 17-18).

After defendant escaped with the shoulder bag, 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). Defendant later turned himself in to police. (Da19).

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 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). 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 29, 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
Jaykil A. Rodwell A-2961-23

Legal Argument

Point I

Defendant's obstruction conviction must be affirmed as the State proved every element of its case. Police acted in good faith as required by the law. Further, defendant has not met the high burden demanded by the applicable standard of review.

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 State did not prove each element of the obstruction charge beyond a reasonable doubt during the defendant's trial and that thus, the defendant's conviction cannot stand. (Db13-14).

(1) There is no implicit Reyes motion under R. 3:18-1, however, the issue of what the proper standard of review is in this case is immaterial as both potential standards amount to the same thing.

Before addressing the defendant's substantive arguments, the State first wishes to clarify the appropriate standard of review and why this appeal is not cognizable as an appeal from a Reyes motion. Defendant argues that as defendant was convicted at a bench trial, his trial counsel's closing arguments asking the judge to acquit should be viewed as the equivalent of a motion for a judgment of acquittal and reviewed under that standard. In the alternative, defendant argues that the trial court's conviction of the defendant should be reviewed 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. (Db13, n. 6; Db13-16).

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). Additionally, the State notes that an explicit motion for a judgment of acquittal was made in this case by counsel for Jaykil Rodwell. (5T21-1). After denying said motion, Judge Teare gave all other counsel the opportunity to make

identical motions. (5T24-22). Defendant's counsel did not respond. That a motion for a judgment of acquittal under R. 3:18-1 was made and the defendant was given the opportunity to make such a motion and chose not to clearly indicates an intent not to make such a motion. 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.

This principle 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 being raised 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 exactly 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 did not make known to the Court the action he desired the trial court to take, namely consideration of a Reyes motion. 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 its burden. The crux of the defendant's argument on appeal as to R. 2:10-2 is that Judge Teare's determination that Detectives DaSilva and Serrano and Lieutenant Ranges acted in good faith is plain error. He has brought no actual evidence to support this argument as will be discussed below. He makes incorrect factual allegations that the officers were acting arbitrarily. Further, he conflates a review of whether officers were acting in good faith with a review of whether officers were acting with reasonable suspicion, a conflation explicitly rejected by caselaw. It is plain that the defendant has failed to meet the high bar to prove plain error. Therefore, this Court should not hear this case on those 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

[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.

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 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), and 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 Judge Teare set out her credibility determinations of the testifying witnesses. (Da13-15). Then 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." Id. at 471. The 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.

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.

(2) Every element of the obstruction charge was proven beyond a reasonable doubt. Moreover, there exists sufficient credible evidence in the record to support the trial judge's determination of guilt.

Defendant argues 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). (Db14). 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." State v. Crawley, 187 N.J. 440, 460-61 (2006). The defendant's appeal boils down to a simple argument 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. (Db16).

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. Most of the legal conclusions at issue were made based on the facts elicited through their testimony. 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, (Da13-14), and explained in the record as to 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. Defendant cites to Crawley, where our Supreme Court held that "a police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith." (Db15 citing 187 N.J. at 461). 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, specifically, the testimony of the officers.

The detectives were assigned to an area that had experienced multiple recent shootings (3T26-25 to 27-5), saw a group of men as they were driving by (3T32-8 to 10), as they drove by, they noticed Jaykil Rodwell take a step back and appear startled by their presence which drew their attention (3T33-13 to 15), they then noticed Jaykil Rodwell begin to look around as if looking for an escape route (3T34-11 to 13, 80-21, 155-11), that same individual moved 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 the defendant move away from the group, and based on their experience with gun recoveries, they were aware of a

general tactic where one individual would walk away from the group in order 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[7] (3T36-19 to 20, 158-8 to 9), Jaykil Rodwell 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, Jaykil Rodwell, Branden Rodwell, and the defendant assaulted the officers and obstructed their good faith efforts to investigate and then arrest Jaykil Rodwell 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

[7] 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 Jaykil Rodwell. (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 given deference, it is immaterial to the fact that the officers were acting in good faith.

is whether Judge Teare's finding of guilt is "so manifestly unsupported by or 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. (Db17-23). Defendant argues that

"unlike in [prior cases], the police officers did not act in good faith or under color of law. The officers had not received any sort of specific tip or information from dispatch that drew them to this particular address. The officers 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." (Db22-23). 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, there was more than just nervous behavior here. Jaykil Rodwell 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. However, 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 precedent 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, 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. Crawley is clear, 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. However, Crawley clearly says that a distinction between the two exists. If the defendant is not conflating the standards, then the defendant is functionally asking this Court to carve out an exception from the holding in Crawley and hold that a lack of reasonable suspicion is equivalent to a lack of good faith for certain kinds of allegedly unconstitutional stops that he views as inherently arbitrary. However, such a carve out does not exist under any reading of Nyema or Crawley.

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.

To apply the caselaw to this fact pattern, 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 by defendant's counsel 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 Jaykil Rodwell 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 Jaykil Rodwell.

This conclusion seems to flow so evidently from the above facts that it is difficult to imagine another conclusion, and so it is worth addressing the defendant's arguments for why this Court should reach a different conclusion.

Defendant posits that "The record discloses no objective basis for the officer's unfounded, bad-faith belief that the brothers were involved in criminal activity." (Db16). However, as seen above, the record clearly does indicate an objective basis for the officers' belief that Jaykil Rodwell was in possession of a firearm. They testified as to the specific observations that motivated their suspicions.

Defendant additionally argues that "The police officers in this case wholly arbitrarily accosted Justin [Rodwell], Jaykil [Rodwell], and [defendant] when they were doing nothing wrong or suspicious." (Db16). However, 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 Jaykil Rodwell, "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 Jaykil Rodwell 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.

The good faith analysis hinges on the actions and motivations of the officers, not the defendant. Yes, Crawley says that "good faith is an objective, not a subjective, standard." 187 N.J. at 461. However, the question is whether the officers were acting in objective good faith. 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 Jaykil Rodwell was carrying had a firearm in it, they moved to investigate and as soon as they did, Jaykil Rodwell 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 Jaykil Rodwell. "They illegally and dangerously accosted a group of men who had done nothing more than stand near their home." (Db1). "This was wholly arbitrary, nothing more than a random stop of a group of men who were doing nothing wrong or suspicious." (Db25). "When officers, for no reason, jump out of their cars and try to grab someone's bag, they do not act in good faith." (Db26). "They were fishing, not acting in good faith." (Db23). 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 "lets 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 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. (Db24-28). 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." (Db28). 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 Jaykil 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. Detectives DaSilva and Serrano were lawfully performing an official function as defined in the law in investigating Jaykil Rodwell. The defendant obstructed them from performing those functions by physically attacking them to prevent them from carrying out that duty. 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 and factual 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,

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AMENDED REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2967-23
INDICTMENT NO. 21-09-1649-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior
v.	:	Court of New Jersey, Law Division, Essex County.
JASPER D. SPIVEY a/k/a JASPER SPIVEY		Sat Below: Hon. Siobhan A. Teare, J.S.C.
		DEFENDANT IS NOT CONFINED
Defendant-Appellant.	:	

Your Honors:

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

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

Defendant-appellant Jasper Spivey relies on the procedural history and statement of facts set forth in his initial brief. (Db)[2]

LEGAL ARGUMENT

Jasper relies on all the arguments raised in his initial brief, and adds the following.

POINT I

REGARDLESS OF THE STANDARD OF REVIEW, THIS COURT MUST REVERSE THE OBSTRUCTION CONVICTION AND ENTER A JUDGMENT OF ACQUITTAL BECAUSE THE STATE DID NOT PROVE THAT THE OFFICERS WERE OBJECTIVELY ACTING IN GOOD FAITH AND UNDER THE COLOR OF LAW.

Jasper 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

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[1] For brevity's sake, the procedural history and statement of facts are combined.

[2] Db -- Jasper's Brief
Sb -- State's Brief

(2014). All four defense counsel's summations adequately alerted the trial court that it needed to determine whether the State's proofs were sufficient to establish, beyond a reasonable doubt, that the officers were acting in good faith and under the color of law. (5T59-12 to 65-10 (Jasper); see also 25-18 to 27-7; 34-10 to 16; 34-20 to 35-18; 42-16 to 46-21; 46-23 to 48-3). Moreover, 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."). This court should therefore reach the merits of the appeal.

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, beyond a reasonable doubt, that the officers were acting in good faith. Jasper's argument does not depend, as the State wrongly claims, on disbelieving the trial court's factual findings. Instead, Jasper challenges the trial court's conclusion that the officers were acting in good faith, which is an objective legal conclusion. See State v. Crawley, 187 N.J. 440, 461 n.8 (2006) (explaining that "good faith is an objective, not a subjective, standard"). Because no reasonable fact-finder could conclude that the State proved, beyond a reasonable doubt, that

the police were acting in good faith as defined by caselaw, acquittal was required.

POINT II

THE OFFICERS' FLAGRANT, ARBITRARY, AND UNCONSTUTIONAL ACTIONS REFLECT IMPLICIT BIAS AND CANNOT OBJECTIVELY BE CONSIDERED TO BE IN GOOD FAITH.

The State agrees that under the obstruction statute, "good faith is an objective, not a subjective, standard." (Sb28). And "[t]he 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." (Sb24). Nevertheless, the State contends that the officers' subjective beliefs as to the allegedly suspicious behavior of the brothers are sufficient to find that the officers were acting in good faith. Specifically, the State contends that "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 Jaykil Rodwell was carrying had a firearm in it, they moved to investigate and as soon as they did, Jaykil Rodwell acted in keeping with their suspicions by moving to further block the officers from the shoulder bag, further validating said suspicions." (Sb28).

But these officers' unreasonable, subjective beliefs about this allegedly suspicious behavior not only fail to establish reasonable suspicion to stop the

men under settled New Jersey search-and-seizure jurisprudence but also reflect implicit bias. Police officers would never jump out of their cars and physically accost a group of white women standing on the street in Montclair because one woman looked nervous and adjusted her shoulder bag when the officers drove by. The officers in this case did not act in good faith when they did exactly the same thing to a group of Black brothers standing outside their home in Newark.

Our Supreme Court has repeatedly held, including in decisions issued prior the 2021 encounter in this case, that "[j]ust because a location to which police officers are dispatched is a high-crime area does not mean that the residents in that area have lesser constitutional protection from random stops." State v. Goldsmith, 251 N.J. 384, 400 (2022) (alteration in original) (quoting State v. Chisum, 236 N.J. 530, 549, (2019); State v. Shaw, 213 N.J. 398, 409-10 (2012)). Likewise, our Supreme Court has repeatedly held, including in decisions issued prior the 2021 encounter in this case, that "[o]ur jurisprudence is well-settled that seemingly furtive movements, without more, are insufficient to constitute reasonable and articulable suspicion." State v. Nyema, 249 N.J. 509, 530 (2022) (citing State v. Rosario, 229 N.J. 263, 277 (2017); State v. Lund, 119 N.J. 35, 47 (1990)).

Considering these well-established principles of law and the DOJ report detailing the "stark and unremitting" disproportionate effect of Newark Police

Department's unconstitutional policing on Newark's Black and Hispanic residents,[3] the officers' clearly unconstitutional actions cannot be deemed to have been made in good faith based on their unreasonable and biased subjective beliefs. To be clear, Jasper is not arguing that in every instance when an officer stops a citizen without adequate reasonable and articulable suspicion, the officer is not acting in good faith. Many cases, like Crawley and Williams, present at least some objective basis for the officer's actions, even if that basis does not amount to reasonable and articulable suspicion. But contrary to the State's contention, the record in this case discloses no objective basis for the officers' unfounded, bad-faith belief that the brothers were involved in criminal activity when officers jumped out of their cars and immediately accosted the men and attempted to seize the bag. Unreasonable, subjective beliefs about suspicious behavior cannot redeem arbitrary, flagrant, and unconstitutional conduct.

Indeed, the officers' arbitrary conduct reflects implicit racial bias. The State improperly discounts the harrowing history of unconstitutional and discriminatory policing by the Newark Police Department and essentially argues that these officers were not acting based on the brothers' race because the officers testified that they were not acting based on race. (Sb31-34). But our

[3] United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014), at 16.

Supreme Court has "recognize[d] that implicit bias is no less real and no less problematic than intentional bias." State v. Andujar, 247 N.J. 275, 303 (2021). "Implicit bias refers to . . . attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. Such biases . . . are activated involuntarily and without an individual's awareness or intentional control." Id., at 302-303 (internal quotation marks omitted). "From the standpoint of the State Constitution, it makes little sense to condemn one form of racial discrimination yet permit another." Id. at 303. For this reason, "[i]t is important for the New Jersey Judiciary to focus with care on issues related to implicit bias." Ibid.

As relevant to the present manner, "[t]he problem of implicit bias in the context of policing is both real and intolerable." State v. Scott, 474 N.J. Super. 388, 399 (App. Div. 2023). Judge Wynn of the Fourth Circuit Court of Appeals aptly summarized social science on how implicit bias influences police officer's interpretations of ambiguous behaviors as suspicious:

> Our practice of affording strong deference to "training and experience" has costs. For starters, it incentivizes veteran officers to lean on their "impressions" instead of doing the hard work of building a case, fact by fact. That's a worrisome consequence, given what we now understand (and are still coming to understand) about bias. "[An] increasingly vast psychological literature" shows that "a substantial portion of the racial profiling that occurs in modern policing is the product not of explicit racism but of implicit [bias]." Megan Quattlebaum, Let's Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer, 14

> Stan. J. C.R. & C.L. 1, 13 (2018); see id. at 10–17 (summarizing the literature on this point). And "[o]ne behavioral effect of implicit bias is that it influences how individuals interpret the ambiguous behaviors of others." L. Song Richardson, Police Efficiency and the Fourth Amendment, 87 Ind. L.J. 1143, 1148 (2012). Thus, there are "good cognitive reasons to avoid . .. bare reliance on generalizations based on officer 'experience'" when evaluating ambiguous behavior like a handshake. Andrew E. Taslitz, Police Are People Too: Cognitive Obstacles to, and Opportunities for, Police Getting the Individualized Suspicion Judgment Right, 8 Ohio St. J. Crim. L. 7, 31 (2010).
>
> [United States v. Drakeford, 992 F.3d 255, 267 (4th Cir. 2021) (Wynn, J., concurring) (emphasis added).]

Here, the officer's unreasonable belief that Jaykil had a firearm in his shoulder bag likely stemmed from exactly this sort of implicit bias about Jaykil's allegedly nervous reaction and maneuvering of his bag.

Many studies have also documented the phenomenon of a "stereotype threat," in which a member of a marginalized group experiences anxiety and psychological stress because he or she is concerned that he or she will be stereotyped negatively based on membership in that group. See, e.g., Cynthia Najdowski, How the "Black Criminal" Stereotype Shapes Black People's Psychological Experience of Policing: Evidence of Stereotype Threat and Remaining Questions, Am. Psych., (Apr. 20, 2023); Kimberly Barsamian Kahn, Jean M. McMahon and Greg Stewart, Misinterpreting Danger? Stereotype Threat, Pre-attack Indicators, and Police-Citizen Interactions, 33 J. Police &

Crim. Psych. 45–54 (2018). Researchers have found that awareness of the risk of being stereotyped during police encounters leads Black people to experience both conscious negative emotions as well as subconscious, automatic physiological indications of stress. Najdowksi, How the "Black Criminal" Stereotype Shapes Black People's Psychological Experience of Policing: Evidence of Stereotype Threat and Remaining Questions, at 12.

In this case, the officers testified that Jaykil "appeared startled" and "took a couple of steps back" when the officers drove past. ("3T 155-11 to 18"). But this so-called nervous reaction was likely nothing more than Jaykil's manifestation of anxiety based on the reasonable assumption that these police officers would stereotype him and wrongfully accost him without individualized suspicion, consistent with the Newark Police's "widespread pattern or practice of making pedestrian stops without such individualized suspicion." United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014), at 7.

Considering the New Jersey judiciary's laudable commitment to counteracting implicit bias, this Could should not ignore the clear indications of implicit racial bias evinced by the record in this case. See People v. Williams, N.E.3d 88, 110 (Ill. App. Ct. 2020) (McDade, J., dissenting) ("Our courts need to recognize that systemic racism is a pervasive pattern. When officers act on

hunches and without reasonable suspicion and when data that is unique to our state demonstrates that the privacy of motorists on Illinois roadways is affected by the color of their skin, we, as courts, aid and abet systemic racism by failing to, at the very least, address the issue."). This case is an example of the "real and intolerable" harm caused by implicit bias in policing. Scott, 474 N.J. Super. at 399. It would offend our State Constitution to characterize these officer's arbitrary and unconstitutional actions as being done in good faith and under the color of law.

In sum, even viewing the evidence in the light most favorable to the State and giving all reasonable inferences, the State did not prove, beyond a reasonable doubt, that the police were acting in good faith. Even under the Reyes standard, "[s]peculation . . . cannot be disguised as a rational inference." State v. Lodzinski, 249 N.J. 116, 144-45 (2021). Societal "[s]tereotypes . . . cannot substitute for an absence of evidence relating to an essential element of the offense . . . ." Id. at 156. Despite the officers' testimony about their unreasonable and biased subjective beliefs, the officers acted wholly arbitrarily and unconstitutionally when they got out of their cars to accost a group of men who had done nothing wrong. The police did not approach the men because of any report from dispatch, nor because they had any particularized suspicion that any of the men had done anything wrong. Standing in front of your home with

your brothers and holding a bag is not suspicious. That is all there was here. The police, therefore, acted arbitrarily and not in good faith, and everything that followed is tainted by the initial, egregiously arbitrary police actions. Thus, acquittal is required.

CONCLUSION

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

Respectfully submitted,

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Dated: December 17, 2024