SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3632-23

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.
BRANDEN K. RODWELL,	:	
Defendant-Appellant.	:	Indictment No. 21-09-1649-I
	:	Sat Below:
	:	Hon. Siobhan A. Teare, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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

MARGARET MCLANE
Assistant Deputy
Public Defender
Margaret.McLane@opd.nj.gov
Attorney ID: 060532014

Of Counsel and
On the Brief
September 20, 2024

DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

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

Following a bench trial, the only charge the four men were convicted of was obstruction. But defendants could not be convicted of obstruction because the police did not initiate this encounter in good faith. Instead, they arbitrarily decided to flout all constitutional rules, illegally and dangerously accosting a group of men who had done nothing more than stand near their home. Because the State did not, and cannot, prove an essential element of obstruction – that the police were acting in good faith – Branden's conviction should be vacated and a judgment of acquittal entered.

PROCEDURAL HISTORY

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

On 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

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

and resisting arrest, but convicting them each of obstruction. (Da 10-19) That same day, Judge Teare sentenced all defendants to fines and fees only. (Da 23-25; 6T 13-3 to 19; see also 6T 7-10 to 12 (Jaykil); 6T 11-4 to 9 (Justin); 6T 16-4 to 8 (Jasper)) A notice of appeal was filed on July 22, 2024. (Da 26-28)

STATEMENT OF FACTS

On June 1, 2021, Newark Police Detectives Michael DaSilva and Christopher Serrano and Essex County Prosecutor's Office Lieutenant Paul Ranges went to 62-64 Cypress Street in Newark around 1:30 p.m. (Da 12; 3T 24-4 to 14, 26-20 to 23, 152-24 to 153-4) All three officers were in "civilian clothing" and unmarked cars; Serrano was driving with DaSilva as a passenger in a black unmarked "Ford Crown Vic," while Ranges was driving a black Dodge Charger. (3T 29-21 to 22, 31-1, 31-4 to 6, 31-9 to 12, 153-9 to 15; 4T 206-20 to 22, 207-8, 208-7 to 10)

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

According to DaSilva, when he and Serrano were about two car lengths away, he "saw a group of males," and his "attention was drawn to Jaykil." (3T

32-8 to 16, 333-13, 154-22 to 24, 155-2 to 5) Although DaSilva was wearing a body camera and knew he was supposed to turn his camera on, he did not do so when he first noticed Jaykil nor before he exited the car.[2] (3T 86-10 to 87-1, 105-10 to 12) Instead, DaSilva turned his camera on late, so there is video but no audio of the beginning of the incident. (3T 93-13 to 21) As the trial court found, "[b]y not turning on his [body-worn camera] at the time he left his vehicle, critical evidence was lost. . . ." (Da 12)

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

Although DaSilva's body camera was recording without audio and shows Jaykil as police approached the area, the footage does not show Jaykil looking

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

around as DaSilva claimed he was doing. (3T 82-20 to 24; Da 30 at 1:25-1:38)[3] Moreover, although DaSilva believed that Jaykil was looking to "escape," DaSilva admitted on cross-examination that Jaykil did not walk away, did not run away, and did not go into his nearby home; instead, he stayed right where he was as the police approached in the unmarked cars. (3T 83-13 to 24)

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) Again, while the body camera footage shows Jaykil as the police approach, the video does not show the shoulder bag DaSilva claimed to find suspicious. (3T 100-17 to 23; see Da 30 at 1:25-1:45) Ranges testified that he had no idea why they stopped their cars where they did. (4T 222-14 to 17, 234-21 to 23)

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

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

DaSilva approached Jaykil and immediately grabbed his shoulder bag. (Da 12; 3T 107-12 to 14; 4T 235-21 to 24; Da 30 at 1:35-1:49) Before grabbing the bag, DaSilva did not ask Jaykil if he could speak with him, nor did he ask Jaykil if he could see his bag. (3T 84-10 to 23) When DaSilva grabbed the bag from Jaykil, he also grabbed Jaykil's left arm "to place him under arrest." (3T 85-2 to 6, 159-1 to 5) However, DaSilva did not say anything to Jaykil or announce that he was under arrest. (3T 85-10 to 17) In fact, there is nothing on the body camera footage that reflects any of the police officers announcing to any of the men that they were under arrest at any point. (3T 134-25 to 137-2; 4T 223-12 to 14)

DaSilva testified that "when [he] grabbed the shoulder bag," he "felt the presence of a firearm inside the shoulder bag." (3T 37-11 to 14) However, aside from DaSilva's testimony, there is no evidence that the shoulder bag contained a gun. Although Serrano and Ranges testified that DaSilva announced the presence of a gun, DaSilva admitted on cross-examination that the body camera footage does not reflect him announcing that he felt a gun. (3T 115-10 to 15, 158-8 to 15; 4T 210-25 to 211-5; see Da 30) Moreover, while DaSilva testified at trial that there was a gun in Jaykil's shoulder bag, in the body camera footage following the incident, DaSilva can be heard saying that "the guy in the orange" – Justin – had the gun, not Jaykil. (3T 117-20 to 24; Da 30 at 4:00-4:10) And the

shoulder bag was not recovered, as Jasper Spivey removed the bag and left the scene. (3T 60-9 to 17)

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 towards a van that was parked nearby with its sliding door open, and Jasper and Justin pulled Jaykil away from the officers. (Da 12; 3T 45-1, 47-11 to 18, 161-17 to 162-2; 4T 213-24 to 214-5) DaSilva finally turned on his body camera as he was pushed. (3T 93-13 to 21) Then, as the trial court found, "a melee ensued." (Da 12)

During this "commotion," DaSilva took the shoulder bag and secured it around his neck before Jasper "wrestled" the bag away from him. (Da 12; 3T 51-13 to 16, 52-5 to 7, 52-24 to 53-4; 4T 214-15 to 215-2) According to DaSilva, Jasper "punched" him in the chest, causing his body camera to fall off. (3T 53-16 to 17) DaSilva and Jasper fell to the ground, and DaSilva testified that he could feel a handgun in the bag as it was pressed against his chest. (Da 12; 3T 54-11 to 20, 164-8 to 13) However, as with the first time DaSilva testified he could feel a gun in the bag, there is no evidence to corroborate this assertion. DaSilva testified that Jasper put him in a "choke hold," so Serrano punched Jasper in the face, causing him to let go. (3T 55-7 to 23, 165-18 to 22)

Serrano testified that right after he punched Jasper, Branden "tackled" him.[4] (3T 166-15 to 17) Serrano clarified on cross-examination that Branden was not there when the police first arrived. (3T 183-2 to 12) Instead, the first time Branden got involved was immediately after Serrano punched Jasper, Branden's brother, in the face. (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 went to help Serrano, 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) According to Serrano, while they were on the ground, Jasper grabbed the shoulder bag, Serrano tried to take it from him, and then "was forced to let him go" after what "felt like a kick in the head." (3T 167-11 to 18) According to DaSilva, Jasper "just took off," running away with the shoulder bag. (3T 56-1 to 7)

After Jasper left, DaSilva noticed that his body camera had fallen off, so he retrieved it. (3T 60-9 to 17) DaSilva testified that Justin then approached him and was "[r]esisting [his] control" and "trying to push [DaSilva] off." (3T 60-22 to 61-3, 61-7 to 13) DaSilva testified that Justin "struck [his] chest again,"

[4] Branden is wearing a white tank top and red pants on the body camera footage.

causing his body camera to fall off again. (3T 64-2 to 3) DaSilva testified that at the same time, he saw that Ranges was holding Branden in "a bear hug." (3T 63-14 to 16) Serrano testified that he then went to help Ranges arrest Branden but admitted on cross-examination that they never announced their intention to arrest Branden. (3T 167-21 to 168-3, 185-20 to 24)

According to Serrano, Branden "wasn't compliant." (3T 168-20) Ranges specified that while he was holding Branden, Branden "didn't want to be placed in handcuffs in the rear." (4T 217-14 to 18) DaSilva testified that "the protocol is to handcuff people in back" because of "safety issue[s]." (3T 65-7 to 18) Serrano testified that because Branden did not want to be handcuffed behind his back, Branden "was taken to the ground and then ultimately he was handcuffed while on the ground." (3T 167-21 to 168-3, 168-18 to 22)

Newark Police Detective Darren Sinclair and his partner, Officer Gabriel Gonzalez, arrived around 1:45 p.m., ordered Branden to put his hands behind his back, and when he didn't, ordered that the officers "take him to the ground." (5T 6-17, 7-4 to 6, 7-15 to 22, 9-5 to 9, 9-11) Sinclair was wearing a body camera that day but it "became dislodged," and no footage was introduced into evidence. (5T 11-5 to 13)

The only body camera footage that exists, from DaSilva's body camera, shows Branden repeatedly asking police to handcuff him in the front and then to

put him into a police car. (Da 30 at 5:50-6:30; 4T 226-18 to 22, 228-9 to 11) Instead, four or five police officers tackle him to the ground and pull his arms behind his back before handcuffing him. (Da 30 at 6:30-7:38)

In addition to this evidence the State introduced a video posted by Jaykil and Jasper to Jasper's Instagram account. (5T 16-18 to 23) In the video, Jaykil and Jasper explain that they "had an altercation yesterday" that "got very violent from the police officers" 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, also introduced into evidence by the State, 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 hearing this evidence, the trial court acquitted Branden 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." (Da 16) The court acquitted Branden of resisting arrest because the officers did not arrest Branden "until after the physical commotion," and Branden "did not try to flee and was fully compliant with officers' orders." (Da 16) However, the court found Branden guilty of obstruction because it found that he "was fully aware that officers were attempted to investigate" Jaykil when Branden "began pushing and shoving officers. . . preventing them from successfully performing the arrest." (Da 16) In addition, Branden "refuse[d] to be handcuffed from . . . behind and attempt[ed] to prevent officers from performing their legal duties." (Da 16)

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. (5T 25-7 to 27-7)[5]

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). When the State fails to carry out its constitutionally mandated burden, a court must grant a motion for a judgment of acquittal. See R. 3:18-1. The standard for assessing whether a judgment of acquittal must be entered is "whether, viewing the State's evidence in its entirety, be that evidence

[5] Defense counsel argued that the court should acquit Branden of obstruction because the police did not act in good faith, under color of law. (5T 25-7 to 27-7) As this was a bench trial rather than a jury trial, counsel's closing arguments asking the judge to acquit should be viewed as the equivalent of a motion for a judgment of acquittal. Alternatively, the court's failure to acquit defendant of obstruction of justice should be reviewed by this Court under the plain error standard because convicting defendant of an offense that the State has not proven beyond a reasonable doubt is a miscarriage of justice that should be addressed by this Court. R. 2:10-2

direct or circumstantial, and giving the State the benefit of all favorable inferences which reasonably could be drawn there from, a reasonable jury could find guilt of the charge beyond a reasonable doubt." State v. Reyes, 50 N.J. 454, 458-59 (1967). Here, the State failed to prove that the police were "lawfully performing an official function," N.J.S.A. 2C:29-1(a), such that a judgment of acquittal must be entered. U.S. Const. amends. V, XIV, N.J. Const. art. I, ¶¶ 1, 10; Winship, 397 U.S. at 362-64.

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 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 Supreme Court explained that "[a]mong other things," this objective good faith requirement means that an officer "who reasonably relies on information from headquarters in responding to an emergency or public safety threat may be said to be acting in good faith

under the statute." Id. at 461, n.8 (emphasis in original). In contrast, "a police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith." Ibid.

Here, as argued by defense counsel (5T 25-7 to 27-7), the State did not, and could not, prove this "prerequisite for a conviction" beyond a reasonable doubt. Ibid. The police in this case wholly arbitrarily accosted Jaykil, Justin, and Jasper when they were doing nothing wrong or suspicious. DaSilva, without turning on his body camera as required, immediately grabbed Jaykil's bag from him, without any valid cause. Branden became involved after seeing someone not wearing a police uniform, punch his brother in the face. The police's conduct in this case was flagrantly unconstitutional – so far beyond what our law permits that it was not in good faith. The police's actions, though arbitrary and illegal, were also strikingly similar to what the Department of Justice described in a 2014 Report as the Newark Police Department's pattern or practice of unconstitutional stops and arrests. United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014) ("DOJ Report"). Repeating the exact same type of illegal actions the Department of Justice warned the Newark police against seven years earlier cannot be excused. The police ought to have known better. They were not acting in good faith. Thus, a judgment of acquittal on the obstruction charge should be entered.

The egregiousness of the police conduct in this case is far different from the cases where our courts have found the good faith requirement to be satisfied. For example, in State v. Crawley, two police officers who were on patrol received a dispatch from headquarters "that a person was armed with a gun outside a bar." Id. at 443. The dispatcher provided a detailed description of the suspect, including his race, approximate age, height, weight, and that he was wearing "a green jacket, red shirt, blue jeans, and black boots." Id. at 444. "Less than two minutes later," on the same street as the bar, the officers saw the defendant, who "matched exactly" the description of the suspect, walking "at a semi-brisk pace" with his hands in his jacket pockets. Ibid. Additionally, this specific street was a "very high narcotics area" and the specific bar was "notorious," known for "[a] lot of weapons offenses." Ibid. As they drove towards the defendants, the officers, who were in a marked patrol car, told the defendant, "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 the Supreme Court did not decide the issue, calling it a "difficult question." Id. at 443, 451. The Supreme Court recognized that a stop like the

one in Crawley could be constitutional "if the dispatcher . . . had been provided adequate facts from a reliable informant. . . ." Id. at 457. The Court explained that the officers were "[r]elying on the dispatcher's information and acting with precaution" when they tried to stop and talk to the defendant, and the Court found "nothing unreasonable about the steps taken" by the officers. Id. at 462. In fact, "[t]he failure to act would have constituted a dereliction of duty." Ibid. Under these circumstances, the Supreme Court had no difficulty concluding that the officers were acting in good faith.

The Court similarly concluded that police were acting in good faith in State v. Williams, 192 N.J. 1 (2007). In that case, around 2 a.m., officers on patrol in a marked police car received a dispatch that "a black man wearing a black jacket" was possibly selling drugs at a specific address in Elizabth. Id. at 4-5. The neighborhood where the home was located was known to the officers as "an area rampant with weapons and drug-dealing offenses," with one of the officers having made about 100 drug-related arrests in that immediate area, where about half of those arrests involved suspects armed with weapons. Id. at 5. The officers responded to the address and saw two black men wearing black jackets in front of the home. Ibid. One of the men walked away, while the other, the defendant, was "shocked and unnerved" but remained where he was. Ibid. The officers "approached defendant for the purpose of interviewing him." Ibid.

One of the officers asked the defendant to put his hands on his head so that they could conduct a frisk for their safety. Ibid. The defendant then pushed the officer and fled before he fell and was arrested. Ibid.

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

Similarly, in State v. Reece, 222 N.J. 154 (2015), the police were clearly acting in good faith and under color of law when the emergency aid doctrine justified their entry into defendant's home. In Reece, police responded to a dropped 9-1-1 call that originated from the defendant's home. Id. at 158. A uniformed officer who responded saw that there were three cars in the driveway. Ibid. The officer knocked on the front door and asked defendant if he had made the 9-1-1 call. Id. at 158-59. Defendant denied making the call and insisted that he was alone in the home. Id. at 159. The officer radioed for backup and

confirmed with dispatch that the 9-1-1 call had come from defendant's home and his phone number. Ibid.

The officer then noticed "that defendant had a small abrasion on his right hand," "around the knuckle area" and "similar to 'an abrasion that you would receive from punching something.'" Ibid. The officer therefore asked defendant if he was married, the defendant responded that he was, but defendant's tone became "frustrated." Ibid. The officer asked defendant if he could enter the house and look around, but defendant refused consent. Ibid. Two additional officers arrived and told defendant that they "needed to check the house," but defendant "slammed the door closed." Id. at 159-60. While defendant was trying to lock the door, the officers pushed the door open, announced that defendant was under arrest, and entered the residence. Id. at 160.

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

require[d] that [police] provide immediate assistance to protect or preserve life, or to prevent serious injury." Ibid.

The Court then explained that when the officer "announced his intention to enter the house, he was doing so in order to lawfully perform an official function under the emergency-aid doctrine." Id. at 172. The Court reaffirmed that "[a] suspect is required to cooperate with the investigating officer even when the legal underpinning of the police-citizen encounter is questionable." Ibid. Despite defendant's "suspicions about the officers' intentions," he was not permitted to "prevent the officers from performing their official function," because the officer had made "his investigatory intentions clear" and was "acting under color of law." Ibid. Thus, "[b]ecause the emergency-aid doctrine justified the officers' warrantless intrusion into defendant's home, and because defendant hampered their entry by slamming the door, defendant's obstruction conviction should have been upheld." Ibid. See also State v. Fede, 237 N.J. 138 (2019) (holding that the police were allowed to break the door chain and enter defendant's home under the emergency aid doctrine because of a concern for domestic violence, though vacating defendant's obstruction conviction because he did not affirmatively do anything to hamper police actions).

In this case, unlike in Crawley, Williams, and Reece, the police were not acting in good faith and under color of law. The police had not received any sort

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

Even if the officers were acting reasonably in patrolling that area for both potential violent crime and drug dealing, they acted wholly arbitrarily and not in good faith when they accosted the defendants. They did not know any of the men. They had no description of anyone they were looking for, so they had no reason to believe that the men "matched" any nonexistent description of a suspect. And the men were not doing anything out of the ordinary, let alone suspicious. They were simply standing outside in a residential neighborhood,

talking to one another. The fact that Jaykil was carrying an ordinary shoulder bag does not change anything. As our Supreme Court has explained, when discussing so-called high crime areas, "[t]hree people standing on the street interacting with each other, whether in a high-crime neighborhood or not, is not suggestive of criminal activity without more." State v. Goldsmith, 251 N.J. 384, 403 n.6 (2022).

Moreover, DaSilva and Serrano's claims that Jaykil appeared "startled" by the arrival of two unmarked police cars and "looked around" adds absolutely nothing to the nonexistent basis for the police actions here. (3T 33-14 to 15, 34-11 to 13, 155-11 to 18) In fact, the Newark Police's own policies prohibit stopping someone because they are nervous: "Newark Police Officers are prohibited from. . . [b]asing investigatory stops / detentions solely on an individual's response to the presence of police officers, such as an individual's attempt to avoid contact with an officer." Newark Police Division, General Order 18-14, Consensual Citizen Contacts and Investigatory Stops (Dec. 31, 2018), at p. 5.[6]

As the Supreme Court reaffirmed in State v. Nyema, "nervous behavior or lack of eye contact with police cannot drive the reasonable suspicion analysis

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

given the wide range of behavior exhibited by many different people for varying reasons while in the presence of police." 249 N.J. 509, 533 (2022) (citing State v. Rosario, 229 N.J. 263, 277 (2017)). The Court in Nyema further explained one of the reasons that nervousness or appearing startled cannot form the basis of a reasonable suspicion determination: police officers, and the State, try to have it both ways – "In some cases, a defendant's alarmed reaction is asserted as justification for a stop, but in other cases, a defendant's non-reaction is argued to form the basis for reasonable suspicion." Ibid. (emphasis in original). The Court criticized this kind of policing where "whatever individuals may do – whether they do nothing, something, or anything in between – the behavior can be argued to be suspicious." Id. at 533-34.

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

In short, the police had no valid reason for stopping their cars to approach the defendants. Unlike in Crawley and Williams, where police had specific

information from dispatch about a specific suspicious person, the police here had nothing. This was wholly arbitrary – nothing more than a random stop of a group of men who were doing nothing wrong or suspicious. Worse still, the police here did not begin by conducting a field inquiry or even an investigative stop; DaSilva jumped out of the car and immediately grabbed Jaykil's bag. Grabbing the bag was a seizure for purposes of the Fourth Amendment and Article 1, par. 7, for which the police needed probable cause – not just reasonable suspicion.

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

Unfortunately, the flagrantly illegal conduct of these Newark police officers is not new, further demonstrating the State's failure to establish good

faith. Between May 2011 and its final report, issued in July 2014, the United States Department of Justice investigated the Newark Police Department "after receiving serious allegations of civil rights violations by the NPD, including that the NPD subjects Newark residents to excessive force, unwarranted stops, and arrests, and discriminatory police actions." United States Department of Justice, Civil Rights Division, Investigation of the Newark Police Department, (July 22, 2014) ("DOJ Report"). Overall, the investigation "showed a pattern or practice of constitutional violations in the NPD's stop and arrest practices, its response to individuals' exercise of their rights under the First Amendment, the Department's use of force, and theft by officers." DOJ Report at 1.

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

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

"[T]housands of the stops" involved facts similar to what occurred in this case – with "individuals who were described merely as 'milling,' 'loitering,' or 'wandering,' without any indication of criminal activity or suspicion," sometimes "augmented with a notation that the 'milling,' 'loitering,' or 'wandering' was taking place in high-crime areas, high-narcotic areas, or high-gang activity areas." Id. at 9. Additionally, and also similar to this case, Newark officers often "illegally stopped individuals whom officers perceived to react negatively to the presence of police officers, without any additional indicia of criminal activity." Id. at 10. For example, officers tried to justify stops for

reasons including, "Actor Upon Noticing Our Presents [sic] Changed His Direction of Travel," and "Observed Actor Hid Behind A Car When He Observed Police Car." Id. at 10. As the DOJ noted in its report, "[w]ithout any indicator of criminal activity or suspicion of an intent to engage in criminal activity, these reasons do not constitute reasonable suspicion to detain an individual, and are therefore constitutionally deficient. Yet, the reports demonstrate that these have been the most common type of pedestrian stops made by NPD officers." Id. at 9. "[T]he repeated reliance on these insufficient justifications strongly suggests that NPD officers do not appreciate what is legally required for reasonable suspicion of criminal activity." Ibid.

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

The DOJ detailed the disproportionate effect of NPD's policing on Newark's Black and Hispanic residents, calling the disparity "stark and unremitting." Id. at 16. About 80% of NPD's stops and arrests involved Black

residents, even though Newark's population is only 53.9% black. Id. at 16, 19. "Black residents of Newark are at least 2.5 times more likely to be subjected to a pedestrian stop or arrested than white individuals." Id. at 16, 20.

The DOJ further noted that "there is more specific evidence that, while not conclusive, supports a conclusion that the NPD's failure to require its officers to adhere to legal standards for stops facilitates impermissible reliance on race." Id. at 19. For example, NPD officers "used the conclusory phrase 'suspicious person,' without articulating any facts that establish actual reason for suspicion, to justify approximately 1,500 stops" over a three-and-a-half-year period. Ibid. Of these stops, "85% were stops of individuals identified by officers as black" – "a proportion starkly inconsistent with Newark's demographic breakdown." Ibid.

As the Report explained, "regardless of why the disparity occurs, the impact is clear: because the NPD engages in a pattern of making stops in violation of the Fourth Amendment, Newark's black residents bear the brunt of the NPD's pattern of unconstitutional policing." Id. at 17. As a result of "[t]his undeniable experience of being disproportionately affected by the NPD's unconstitutional policing," many community members distrust the police. Ibid. Many community members described Newark "as a city where black residents, and particularly black men, fear law enforcement action, regardless of whether

such action is warranted by individualized suspicion." Ibid. Worse still, community members "indicated that unjustified stops by NPD officers have become so routine that many members of the black community have ceased feeling a sense of outrage and simply feel a sense of resignation." Ibid.

In short, this "disparate impact of the NPD's stop, search, and arrest practices appears to be an additional harm stemming, at least in part, from the same poor policing practices that result in stops, searches, and arrests that violate the First and Fourth Amendments." Id. at 19. When NPD officers fail "to apply constitutional and legal standards for stops, searches, and arrests," it "increases the opportunity for officers to rely—consciously or unconsciously—on impermissible factors such as an individual's race when conducting law enforcement actions." Ibid.

The officers' actions in this case must be viewed in light of this history of unconstitutional policing by the Newark police, and particularly the "stark and unremitting" effect of these unconstitutional stops on Black men living in Newark. Id. at 16. Although the stops reviewed by the DOJ occurred about ten years before the stop in this case, the pattern of misconduct repeated itself here. The officers here jumped out of their unmarked cars, without turning on their body cameras, because a group of men were standing outside their home in Newark, and one of the men appeared startled by the police presence –

something these officers found to be suspicious. Cf. Id. at 9-10. The DOJ wrote a scathing report emphasizing the unconstitutionality of this kind of stop back in 2014. When the police did the exact same unconstitutional thing in 2021, it was in bad faith. Accosting a group of Black men near their home for no reason amounts to bad faith. Doing so years after the United States Department of Justice entered into a consent decree with the city of Newark because of stops exactly like this one amounts to bad faith. The police's flagrantly unconstitutional conduct and bad faith means that the State did not, and cannot, prove an essential element of an obstruction conviction – that the police were "[l]awfully performing an official function." Crawley, 187 N.J. at 460-61. In light of the State's failure to prove this element of obstruction, Branden's conviction must be vacated and a judgment of acquittal entered.

CONCLUSION

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

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: /s/ Margaret McLane
Assistant Deputy Public Defender
Attorney ID: 060532014

Dated: September 20, 2024

STATE OF NEW JERSEY, :	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiff-Respondent, :	DOCKET NO. A-003632-23
v. :	
BRANDEN K. RODWELL, :	CRIMINAL ACTION
Defendant-Appellant. :	On Appeal from a Judgment of Conviction of the Superior Court, Law Division, Essex County.
	Sat Below: Hon. Siobhan A. Teare, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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

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

e-filed: October 28, 2024

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Counter-statement of Procedural History and Facts[1]

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

While traveling in their vehicle, Detective DaSilva and Detective Serrano noticed a group of men standing outside: Jaykil Rodwell, Justin Rodwell, and Jasper Spivey. Branden Rodwell, defendant, was not there at the time. (3T183-10). 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

[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).

stiffen his body and focus in on their police vehicle. He additionally noticed Jaykil Rodwell take a couple steps back and maneuver his head in multiple directions.[3] These actions, based on Detective Serrano's extensive experience, led him to believe that Jaykil Rodwell was looking for an avenue of escape. (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. (3T44-1, 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 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.

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[3] Defendant claims that the footage does not show Jaykil Rodwell looking around (Db5-6), 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).

(3T130-6). Believing, based on his experience and the defendant's actions, 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] (3T384-13 to 23, 107-1, 130-8 to 131-6, 140-21 to 141-5). Notably, Detective DaSilva did not grab the bag as soon as he exited the vehicle; there was a seven second period between when he exited the vehicle and when he grabbed the bag. (Da28 1:41-1:48). Further, he did not lunge for the bag, he moved around 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).

At that point, 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 Jasper Spivey and Justin Rodwell began attacking the officers to prevent them from arresting Jaykil Rodwell. They physically attempted to push the officers off Jaykil Rodwell. (3T162-14). Justin Rodwell pushed

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

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). Detective DaSilva fell to the ground with the shoulder bag and covered it with his body. (3T54-17 to 25, 164-9 to 13). Jasper Spivey then placed Detective DaSilva in a choke hold and began choking him. Detective Serrano noticed that his partner was in danger and punched Jasper Spivey in the face to get him off Detective DaSilva. After being punched, Jasper Spivey released Detective DaSilva. (3T55-2 to 23, 165-18 to 166-5).

Immediately after Jasper Spivey released Detective DaSilva, the defendant 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 the defendant off Serrano's back, and put him in a "bear hug." (4T215-18 to 23, 216-3 to 7, 238-1 to 10). While they were on the ground, Jasper Spivey grabbed the shoulder bag. Detective Serrano tried to prevent him from escaping with the shoulder bag and then "was forced to let him go" after what "felt like a kick in the head." (3T167-11 to 18). Jasper Spivey managed to escape with the shoulder bag. (3T167-19). Jaykil Rodwell also left the scene. (Da12, 17-18).

After Jasper Spivey escaped with the shoulder bag, the officers moved to take Justin Rodwell and the defendant 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 defendant into custody, however, the defendant did not comply. (3T168-20). Lieutenant Ranges testified at trial that the defendant "didn't want to be placed in handcuffs in the rear." (4T217-14 to 18). Defendant asked to be handcuffed in the front and refused to allow officers to handcuff him in the back. Because defendant was not compliant as the officers attempted to handcuff him, he "was taken to the ground and then ultimately he was handcuffed while on the ground." (3T167-21 to 168-3, 168-18 to 22). The defendant and codefendants were ultimately taken into custody.

On September 3, 2021, an Essex County Grand Jury returned indictment 21-09-1649-I, charging defendant with three counts of third-degree aggravated assault on a law enforcement officer, fourth-degree obstruction, and third-degree resisting arrest by force. (Da1-9). On September 14, 2022, all the charges in the indictment were downgraded to disorderly persons offenses. The defendant was charged with three counts of simple assault, obstruction, and 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 the instant appeal on July 22, 2024. [5] (Da26-28).

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.

[5] 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

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. (Db14).

(1) The defendant misstates the appropriate standard of review. The appropriate standard of review is deferential to the findings of the trial court.

Before addressing the defendant's substantive arguments, the State first wishes to clarify the appropriate standard of review. 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. 5). However, this is not how a motion for a judgement of acquittal works under prior caselaw. In a bench trial, closing arguments are not automatically taken to be a motion for a judgement of acquittal, the defendant's counsel must actually make a motion for a judgement 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 actual motion for a judgement 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 is on record as replying "no, judge." (5T24-24).

Further, several cases have outlined the standard of review for a judge's verdict following a bench trial. The standard of review in a bench trial is not whether "the verdict was against the weight of the evidence," but rather "whether there is sufficient credible evidence in the record to support the judge's determination." State in the Int. of R.V., 280 N.J. Super. 118, 120-21 (App. Div. 1995). Additionally, "When 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). Thus, reviewing courts "do not disturb the factual findings and legal conclusions 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).

Thus, the defendant's argument that a closing argument in a bench trial should be taken as a motion for a judgement of acquittal, without such a motion actually having been made, flies in the face of previously established precedent establishing the standard of review for bench trial verdicts. Additionally, as the standard of review for bench trial verdicts is well established, and a defendant cannot be convicted of an offense if every element of the offense is not proven, creating a separate lower standard of review for such a common type of appeal would be an absurdity. The standard described above wherein a trial court's factual findings are not disturbed and a reviewing court limits its review to whether there is sufficient credible evidence in the record to support the judge's determination is the standard established by law, and the defendant's attempts to baselessly and artificially lower that standard should be rejected by this Court.

(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.

The 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 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. (Db14).

In addressing the merits, or rather lack thereof, of the defendant's arguments, first, the standard of review must be restated. 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) (quoting Curtis v. Finneran, 83 N.J. 563, 570 (1980)). Judge Teare 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. (Da15). Then Judge Teare applied said caselaw to the facts of the instant case and held that she need not judicate the lawfulness of the initial stop. This decision was based on the fact that Detective DaSilva testified that the reason he approached Jaykil Rodwell is because, based on Jaykil Rodwell's movements

and suspicious behavior, he believed that the defendant was in possession of a firearm. (Da15-16). Thus, Judge Teare held that the officers were operating in good faith, regardless of whether they had sufficient basis for reasonable suspicion.

In support of this decision, Judge Teare cited to Crawley, where our Supreme Court held that "under N.J.S.A. 2C:29-1 a police officer acting on a dispatch may be 'lawfully performing an official function' even if a court later determines that reasonable suspicion was lacking to justify the stop." 187 N.J. at 451. Judge Teare then found based on the facts in the record that the officers' comments to the defendant and co-defendants would have made it "abundantly clear that defendants knew that Detective DaSilva and Detective Serrano were law enforcement officers that were attempting to investigate Jaykil Rodwell." (Da16).

Judge Teare then applied the law to each co-defendant in turn. Pertaining to the obstruction charges against this defendant, Judge Teare found the defendant guilty. (Da16). Judge Teare found that the "defendant was fully aware that officers were attempting to investigate co-defendant Jaykil Rodwell when [he] began pushing and shoving officers during their investigation preventing them from successfully performing the arrest of Jaykil Rodwell." Id. She additionally found that the defendant refused to be handcuffed from behind and

attempted to prevent officers from doing so. Judge Teare wrote that "[defendant] did not have a right to determine and attempt to control how an officer places cuffs on him, he must comply." Id. Thus, Judge Teare fully complied with Locurto and clearly stated her factual findings and correlated them with the relevant legal conclusions.

Following this inalienable conclusion that Judge Teare complied with the obligations of Locurto, a 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 Resort, Inc., 65 N.J. at 484. This is an incredibly high bar, and one the defendant completely fails to meet, which helps explain why he attempts to convince this Court to introduce a novel lower standard of review.

The defendant's argument challenges Judge Teare's legal conclusions as applied to the facts of the case. He argues that the officers initiated the encounter unconstitutionally, arbitrarily, and based on racist motivations. Thus, defendant argues that he could not be convicted of obstruction because the police did not initiate this encounter in good faith. (Db1). He 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." 187 N.J. at 461. Defendant posits that,

> [t]he police in this case wholly arbitrarily accosted [defendant and co-defendants] when they were doing nothing wrong or suspicious. DaSilva, without turning on his body camera as required, immediately grabbed Jaykil's bag from him, without any valid cause. [Defendant] became involved after seeing someone not wearing a police uniform, punch his brother in the face. The police's conduct in this case was flagrantly unconstitutional – so far beyond what our law permits that it was not in good faith. [Db15].

However, the defendant's arguments do not hold up to scrutiny and they certainly do not meet the high bar that the standard of review creates in this case. Defendant alleges that officers arbitrarily accosted defendant and co-defendants without any valid cause other than racial bias. However, at trial, in making this argument, defendant's counsel 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 was because of department policy which stated 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).

That report stated that Detective DaSilva observed "a male wearing a white shirt and long dreads within the area which prompted him to stop, exit his vehicle and further investigate." (3T122-7). However, 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). Thus, testimony was elicited at trial that the report on which the 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.

Defendant discusses at length the history of racial discrimination in the Newark Police Department. (Db24-29). 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 the 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." (Db29). However, while racial discrimination is a serious issue in the United States, especially as it

pertains to policing, the 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. If defendant cannot show that there was a racial motivation for this stop, then these arguments and citations are irrelevant, and defendant cannot make such a showing.

During trial, Detective DaSilva testified as to what motivated him to initiate the encounter with the defendant and co-defendants. He testified that as his vehicle approached the defendant and co-defendants, he noticed that Jaykil Rodwell became startled and nervous by police presence, he took a step backward, and he moved his shoulder bag away from the vantage point of the vehicle. (3T130-3). Specifically, Detective DaSilva testified that "when I saw him move his shoulder bag away from my vantage point, yes, that's when I decided to exit [the vehicle]." (3T100-4). Thus, Detective DaSilva testified as to his motivation for the stop, that it was not arbitrary nor was it motivated by race or any defendant's physical appearance. It was motivated by Jaykil Rodwell's actions. . Further, while the defendant raises that Jaykil Rodwell did not run (Db6), it is clear that he was attempting to hide the shoulder bag from the officers, which is what officers noticed. Running would have clearly drawn

attention and thus, the fact that he did not run is irrelevant to the officers' evaluation of his actions.

Detective Serrano, who was in the same car as Detective DaSilva, additionally testified as to why he agreed with Detective DaSilva in initiating the encounter. He testified that

> [a]s we were driving, I immediately -- I noticed Jaykil Rodwell noticed our police vehicle, and immediately, he stopped talking and he appeared startled, specifically by stiffening his body and focusing in on our police vehicle. And I also noticed he took a couple steps back and maneuvered his head in multiple directions which, in my experience [in gun recoveries], leads me to believe that he was looking for an avenue of escape. [3T155-11].

Thus, just as with Detective DaSilva, Detective Serrano testified as to his motivation for the stop, that it was not arbitrary, nor was it motivated by race or any defendant's physical appearance. It was motivated by Jaykil Rodwell's actions.

Defendant's argument is based entirely on the unsupported thesis that the officers did not act in good faith because they racially profiled the defendant and co-defendants and thus acted arbitrarily. Defendant cites to several cases in which courts have found that the good faith requirement was met. (Db16-20). Notably, defendant cites to State v. Williams, where our Supreme Court held that when officers "without any basis arbitrarily detained a person on the street" they are not acting in good faith and under color of their authority for the

purposes of the obstruction statute. 192 N.J. 1, 13 (2007). Defendant argues that here, unlike in the other cases he cites to, police did not have a specific tip or information from dispatch, nor did they have any information that a particular person had done anything criminal, nor a description of any person they were looking for. Thus, he argues that the officers were baselessly "fishing." (Db20-21). He argues that the defendant and co-defendants were not doing anything out of the ordinary which might have prompted the stop. However, this is a question of fact, not a question of law.

As noted above, Detectives DaSilva and Serrano testified to the contrary. They testified exactly what motivated the stop and the specific concrete actions they observed which caused their suspicion. They testified that unlike the above excerpt from Williams, they had a basis to detain Jaykil Rodwell. Thus, the defendant's argument is predicated on the idea that Detectives DaSilva and Serrano were not honest in their testimony. In other words, he properly concedes that his appeal lacks merit if Detectives DaSilva and Serrano's testimony was credible on this point, that they did not act arbitrarily, that they acted based on concrete and specific actions observed as they approached the defendant and co-defendants. Consequently, the State reiterates the standard of review for credibility determinations, that "[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." D.M., 451 N.J. Super. at 424.

Judge Teare made specific credibility determinations as to Detectives DaSilva and Serrano's testimony based on the manner in which they testified, which she was uniquely equipped to judge having been present at trial, as well as their professional background and the content of their testimony. She noted that Detective DaSilva appeared "very composed, confident in his answers, and was able to clearly recall the details of the investigation and interview. He answered all questions asked of him by the State and the defense…[h]e did not appear to try and deceive the Court with his responses. Therefore, this Court finds Detective DaSilva's testimony to be credible." (Da13-14). She made near identical findings with regard to Detective Serrano's credibility. (Da14).

Defendant challenges 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). A holistic and not cherry-picked view of the totality of the testimony therefore 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.

Defendant additionally points to other alleged discrepancies in Detective DaSilva's testimony. (Db7). However, these are easily attributable to the length of time since the incident and the confusion during and after the defendant and co-defendants' attack on the officers. There is no error in the credibility findings made by Judge Teare. Thus, this Court must give deference to those credibility findings. As defendant's arguments on appeal fail if Detectives DaSilva and Serrano's testimony was credible as to their motivations not being baseless and arbitrary but rather based on concrete and specific actions observed, the defendant's appeal should be denied, and the judgement of conviction should be affirmed.

Based on arguments made in his brief, defendant would likely argue against this conclusion based on 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, that nervous behavior or lack of eye contact with police alone cannot drive the reasonable suspicion analysis. However, the State does not concede that the instant fact pattern falls afoul of Nyema; there was more than nervous behavior here. Officers observed, based on their experience, what appeared to be an active effort by Jaykil Rodwell to hide the bag from their view. Nyema is therefore easily distinguishable.

Additionally, the question before this Court is not whether the judgements made by Officers DaSilva and Serrano fall afoul of the principle in Nyema and Rosario. 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 lawfully performing an official function. 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. Thus, even if this Court were to make a finding that the officers' actions fall afoul of Nyema, it must be noted that there are many reasons why a stop might be unconstitutional, one of those reasons is a lack of reasonable suspicion, and there are many reasons why a stop might be lacking reasonable suspicion, the restriction against a stop based on nervous behavior is but one of them. The defendant is asking this Court to carve out an exception from the holding in Crawley 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 and simply because a stop might have lacked reasonable suspicion, does not mean that it was, by definition, arbitrary. Such a holding would be counter to established precedent and contrary to public policy.

Based on the above, it is evident that the defendant has failed to meet his burden to show that Judge Teare's factual 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 Resort, Inc., 65 N.J. at 484. Judge Teare found that Detectives DaSilva and Serrano credibly testified as to their non-arbitrary basis for initiating the stop, and thus, under Crawley, it is irrelevant whether said basis would survive a

challenge to the sufficiency of "reasonable suspicion". Thus, Judge Teare found that the State met its burden to prove each element of the crime of obstruction; including among the elements that the officers were lawfully performing an official function defined as acting in good faith under the color of law in the execution of their duties and that the defendant had awareness that the officers were police officers attempting to execute an investigation and arrest.[6] Both the legal conclusions Judge Teare made and the factual findings she made pursuant to those legal conclusions were adequately supported by and consistent with the competent, relevant and reasonably credible evidence presented at trial, including but not limited to the testimony of Detectives DaSilva and Serrano. Therefore, this Court should affirm the judgement of conviction.

(3) The defendant has failed to present any argument which attacks the sufficiency of the second act of obstruction found by Judge Teare, and thus, regardless of this Court's position on the first act of obstruction, the Judgment of Conviction should be affirmed.

It must be noted that the entirety of the defendant's argument rests on his questioning of the basis for the initial stop and whether officers acted in good

[6] The State will briefly note that the defendant raises that the officers never announced their intention to arrest the defendant during his statement of facts. (Db7, 10). However, obstruction charges do not require officers to announce their intent to arrest. Additionally, Judge Teare made a factual finding that the defendant was aware that Detectives DaSilva and Serrano were officers investigating Jaykil Rodwell when he assaulted them. (Da16). This finding was based on and fully supported by the evidence in the record. It is a question of fact, not law, and Judge Teare's finding on this issue is entitled to deference.

faith in initiating contact with the defendant and co-defendants. However, Judge Teare's ruling identified two separate acts of obstruction by the defendant. First, was the initial contact between the defendant and the officers where defendant began pushing and shoving officers during their investigation to prevent them arresting Jaykil Rodwell. Second, was where the defendant refused to be handcuffed from behind and attempted to prevent officers from performing their legal duties. (Da16).

Thus, even setting aside the defendant's first act of obstruction for the moment, with regard to the second act of obstruction, in refusing to comply with officers attempting to handcuff him, there can be no argument that officers were not operating in good faith, nor is one made. By that point in the confrontation, defendant had engaged in a physical altercation with officers. Regardless of how the altercation began, after being physically attacked by the defendant, officers plainly were acting in good faith and performing an official function of their duties in handcuffing and detaining the defendant. At that point, they had not only reasonable suspicion but probable cause, as they were the victims in said physical altercation. In this analysis, it is irrelevant how the altercation began once the defendant had engaged in violence against the officers.

Caselaw is clear. 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 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)).

This principle aligns with the instant case exactly. Regardless of what motivated the initial police action, the defendant reacted with violence towards officers, constituting a new distinct crime, and when police attempted to arrest him for said new distinct crime, defendant refused to allow them to handcuff him and in doing so obstructed them from lawfully performing an official function in good faith. Defendant purposely obstructed the administration of law by attempting to prevent officers from lawfully performing an official function

namely, handcuffing and detaining him for assaulting them.[7] 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 submitted to the officers' attempt to handcuff him and challenge his arrest through the courts. Thus, Judge Teare's legal conclusion that under Crawley, she need not rule as to the constitutionality of the initial stop, is fully supported by caselaw.

On this point, the defendant insinuates that he did not obstruct officers in this way as he did not refuse to be handcuffed, he merely asked police to handcuff him in the front. (Db10-11). However, as Judge Teare found, the defendant does not have the right to determine and attempt to control how an officer places cuffs on him, he must comply. Detective Serrano testified that the defendant "wasn't compliant." (3T168-20). Lieutenant Ranges testified that the defendant "didn't want to be placed in handcuffs in the rear." (4T217-14 to 18). Detective DaSilva testified that "the protocol is to handcuff people in back" because of "safety issue[s]." (3T65-7 to 18). Detective Serrano testified that because the defendant did not want to be handcuffed behind his back, he "was taken to the ground and then ultimately he was handcuffed while on the ground." (3T167-21 to 168-3, 168-18 to 22). The defendant has the right to request to be

[7] The fact that defendant was found not guilty of assault at trial does not change the fact that the officers had grounds to arrest him after he assaulted them, and officers were acting in good faith in attempting to do so.

handcuffed in the front, however, he does not have the right to resist if that request is denied or even ignored, to do so is obstruction under the statute. Judge Teare's verdict on this second act of obstruction was fully supported and consistent with the competent, relevant and reasonably credible evidence presented at trial. Thus, even if this Court grants credence to the defendant's arguments that the officers were not acting in good faith in their initial encounter with the defendant and co-defendants, which, the State reiterates, it should not, the defendant's obstruction conviction should be affirmed based on this second act of obstruction on which Judge Teare based her verdict. For all the above reasons, the judgment of conviction should be affirmed by this Court.

Conclusion

The defendant incorrectly asks the Court to use a far lower standard of review in this case. However, under any standard of review, the defendant has failed to show that his conviction for obstruction should be overturned.

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. He tries to frame his and co-defendants' actions as motivated by fear of police. However, if they were motivated by fear of police as they claim, their first priority would have been to

get away from the police. However, as noted by the State during its closing argument, that was not their priority. Their priority was to protect and then reclaim the shoulder bag seized by Detective DaSilva. As soon as Jasper Spivey got the shoulder bag, he ran. If his priority was to protect his family, as he claimed, why would he have abandoned them? No. It is clear that their priority was preventing the officers from investigating what was in the shoulder bag. (5T75-6 to 77-22). The reason for that is simple. There was a firearm in there. The defendant notes that no firearm was found on the scene, however, none would have been found on the scene if the firearm was in the bag that Jasper Spivey escaped with.

Thus, 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 and then in detaining the defendant and co-defendants after they physically attacked the officers. The defendant obstructed them from performing those functions by physically attacking them and resisting when they attempted to handcuff him. 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,

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

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

FILED, Clerk of the Appellate Division, November 01, 2024, **A-003632-23**

PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Deputy Public Defender
31 Clinton Street, 9th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973-877-1200 · Fax 973-877-1239

JENIFER N. SELLITTI
Public Defender

November 1, 2024

MARGARET MCLANE
ID. NO. 060532014
Assistant Deputy
Public Defender

Of Counsel and
On the Letter-Brief

REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3632-23
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.
BRANDEN K. RODWELL	:	
		Sat Below:
Defendant-Appellant.	:	Hon. Siobhan A. Teare, J.S.C.

Your Honors:

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

DEFENDANT IS NOT CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

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

LEGAL ARGUMENT

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.

Branden relies on the legal arguments from his initial brief, responding here to the State's claims. The State asserts that "the defendant misstates the appropriate standard of review," (Sb 7)[1] making two claims: (1) that "closing arguments are not automatically taken to be a motion for a judgement of acquittal" and "the defendant's counsel must actually make a motion for a judgement of acquittal for the appeal to be considered on those grounds;" (Sb 7); and (2) "The standard of review in a bench trial is not whether the verdict was against the weight of the evidence, but rather whether there is sufficient credible evidence in the record to support the judge's determination." (Sb 8, internal quotation marks and citations omitted) The State's assertions involve multiple, basic errors.

The State points out that Branden's counsel did not formally move for a judgment of acquittal, though failing to explain the significance of this fact. The

[1] This Reply uses the same abbreviations as the initial brief. Sb refers to the State's brief.

only conceivable relevance of the failure to expressly move for a judgment of acquittal under State v. Reyes, 50 N.J. 454 (1967), would be to claim that any argument for acquittal on appeal was waived by counsel's failure to ask for it before the trial court. But this argument is baseless for two reasons.

First, trial defense counsel did ask the trial court to acquit Branden; defense counsel simply did so in her closing argument instead of in a formal motion immediately preceding her closing argument. Branden's counsel argued in summation that the court should acquit him because the police did not act in good faith, under color of law – the exact same argument that is being raised on appeal. (5T 25-7 to 27-7) Although it may have been more technically proper for defense counsel to formally move for a judgment of acquittal at the close of all of the evidence, R. 3:18-1, this would be putting form over substance to an extreme degree. All four defense counsels would have had to tell the court that they were moving for a judgment of acquittal, and then give their entire closing arguments to explain the basis for this Reyes motion. The court would then need to rule on the motion, or reserve ruling on the motion. And, assuming the court had denied the motion or reserved judgment, defense counsels would then need to fully repeat their motions as their closing arguments in this bench trial. That would be a waste of everyone's time. Instead, where there is no jury, and a judge will be both finding facts and applying those facts to the law, there is no reason

to distinguish between counsel's closing argument for an acquittal and a formal Reyes motion. Defense counsel here asked the court to acquit Branden because the police did not act in good faith and under color of law. The court declined to do so. Branden is now appealing that determination. There is nothing improper in the way in which this argument is coming before this Court.

Second, even if it were somehow required for defense counsel to formally move for an acquittal, give her closing argument in support of the motion, then give her closing argument again when that motion was denied – the failure to follow that cumbersome procedure cannot be used by this Court as a reason to affirm Branden's convictions. Whether defense counsel asked for it or not, the State bore the burden of proving each and every element of the offense of obstruction. Whether defense counsel asked for it or not, the trial court had to find that the State proved every element of obstruction beyond a reasonable doubt. It would be absurd, and 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 the trial court to hold the State to its constitutionally mandated burden. If the State did not meet its burden of proof – which is what Branden is arguing here – then this Court must acquit him, regardless of what his counsel did or did not do below. R. 2:10-2.

The next fundamental problem with the State's argument on appeal is that the State is conflating the standard for an appeal of a Reyes motion with an argument on appeal that either (1) the judgment is against the weight of the evidence; or (2) that the trial judge's fact-finding is wrong. (Sb 8-9) A Reyes motion is different from a claim on appeal that the verdict is against the weight of the evidence. Compare State v. Saunders, 302 N.J. Super. 509, 524 (App. Div. 1997) ("A trial court may only set aside a jury verdict as against the weight of the evidence if, considering the jury's opportunity to assess the witnesses' credibilities, a manifest denial of justice clearly and convincingly appears."), with R. 3:18-1 ("At the close of the State's case or after the evidence of all parties has been closed, the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses charged in the indictment or accusation if the evidence is insufficient to warrant a conviction.").

While it is true that the defense cannot argue in an appeal from a bench trial that the verdict is against the weight of the evidence, an appellate court is fully capable of, and is required to when asked, evaluate whether the defendant is entitled to an acquittal on appeal. That is what Branden is asking this Court to do here: conclude that the State failed to prove, beyond a reasonable doubt, every single element of the offense of obstruction.

The standard of review for such a determination by an appellate court reviewing whether the defendant must be acquitted is well-established: "In assessing the sufficiency of the evidence on an acquittal motion, we apply a de novo standard of review." State v. Williams, 218 N.J. 576, 593-94 (2014). The appellate court "must determine whether, based on the entirety of the evidence and after giving the State the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony, a reasonable [fact-finder] could find guilt beyond a reasonable doubt." Ibid. (citing Reyes, 50 N.J. at 458-59 (1967)).

The State's constitutionally mandated burden of proof, and consequently the standard set forth in Reyes in assessing whether the State has met that burden, applies with equal force whether it is a jury trial or a bench trial. See, e.g., State v. Medina, 349 N.J. Super. 108, 132 (App. Div. 2002) (citing Reyes and holding that the State met its burden of proof in a bench trial for obstruction). Here, as argued in Branden's initial brief, that standard is met. Even given the State "the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony," no reasonable fact-finder could conclude that the State proved, beyond a reasonable doubt, that the police were acting in good faith.

The appeal of a Reyes motion is equally different from a claim on appeal that a bench-trial judge's findings of fact are wrong. Again, the question for a Reyes acquittal is whether, taking all of the State's evidence as true, did the State meet its burden of proof. There is no challenge to fact-finding with a Reyes appeal. Thus, the State's claim that Branden's arguments depend on disbelieving the trial court's findings of fact is wrong.[2]

Instead, considering all of the evidence in the light most favorable to the State, the State still did not prove, beyond a reasonable doubt, that the police were acting in good faith. The police here acted wholly arbitrarily 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's 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.

[2] If the State is claiming that the trial court's conclusion that the police were acting in good faith is somehow a finding of fact that cannot be reviewed on appeal, that is wholly incorrect. Good faith is an objective legal conclusion and is thus reviewed de novo. See State v. Crawley, 187 N.J. 440, 461 (2006) (explaining that "good faith is an objective, not a subjective, standard").

CONCLUSION

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

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: /s/ Margaret McLane
Assistant Deputy Public Defender
Attorney ID: 060532014

Dated: November 1, 2024