

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4138-24

STATE OF NEW JERSEY, : CRIMINAL ACTION

Plaintiff-Respondent, : On Appeal from a Judgment of
v. : Conviction of the Superior Court
of New Jersey, Law Division,
Essex County.

MAURICE D. ROSS, : Indictment Nos. 23-03-00533-I

Defendant-Appellant. : 23-03-00534-I

: Sat Below:

: Hon. Lori Ellen Grifa, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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CITATION KEY

Dmb – Defendant’s motion brief

Da – Defendant’s appendix

1T – March 26, 2025 (motion)

2T – June 3, 2025 (motion)

¹ The trial court motions and briefs are included in accordance with R. 2:6-1(a)(2), as they were relied upon the trial court in rendering its decision and demonstrate the issues raised.

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PRELIMINARY STATEMENT

In 2020, New Jersey passed a comprehensive new law requiring all law enforcement officers to wear and use body-worn cameras (BWCs) in their interactions with the community. The law was designed to foster transparency and trust between law enforcement and the public at large by providing objective documentation of police encounters with the public. If the BWC captured evidence of a crime, the State would be able to rely on the objective recording for prosecution. If the BWC captured evidence of police misconduct or unlawful searches, the recordings would be usable by criminal defendants to exonerate themselves or demonstrate the unlawfulness of the conduct.

Because the purpose of the statute is broad, the text of the statute is broad as well. The law covers nearly all police officers, and only exempts certain specific types of police-civilian encounters from its mandate. And to ensure that the law is adhered to, the law also contains a broad remedy. Should any officer fail to follow the requirements to use a BWC or preserve the resulting footage, a criminal defendant is entitled to a rebuttable presumption, or adverse inference, that the footage would have contained exculpatory evidence if it had been properly captured or preserved. The portion of the law regarding the adverse inference does not contain any good faith exception or reasonableness

inquiry; the law places the burden squarely on the State to ensure that its agents are properly equipped and trained when sent out to enforce the law.

On May 14, 2022, Special Law Enforcement Officer² (“SLEO”) Benjamin Mauriello of the Newark Housing Authority stopped and searched Maurice D. Ross. Mauriello testified that he stopped Ross to cite him for trespassing, when Ross began fidgeting at his waistband. Mauriello stated that he grabbed Ross’ hand and felt the butt of a handgun.

At the time of the offense, Mauriello had not been assigned a BWC, though he had been told by the city of Newark that he was supposed to receive one. Nevertheless, he was wearing a BWC that he had purchased for himself, but did not activate it at any point during the encounter. As a result, no BWC footage of the encounter or the purported fidgeting exists. Thus, when Ross moved to suppress the firearm as the product of an unlawful search, he requested that the court apply the adverse inference in accordance with the law and presume that the missing BWC footage would have demonstrated that the search was unlawful.

Contrary to the plain text and purpose of the law, the court held that the BWC law only applies to people who work for law enforcement agencies and

² SLEOs (or “SLEOs”) are frequently referred to as Special Police Officers (or “SPOs”) in the record. The relevant statutory text refers to them as SLEOs, and so that is the terminology used in this brief.

did not apply to Mauriello because he was employed by the Newark Housing Authority, rather than a law enforcement agency. The court's holding was completely unsupported by the relevant statutory text, which contains no such limitation on which law enforcement officers are subject to the law. The holding also ran contrary to the purpose of the law, which is to promote transparency and accountability.

This Court should find that the trial court erred in interpreting the statute. To hold otherwise would carve out a loophole that allows an entire class of officers to stop, search, and arrest without the transparency BWCs are meant to ensure — undermining both the purpose and promise of the statute. Because the trial court should have drawn the adverse inference and because there was no reasonable suspicion for the stop or search, this Court should also order suppression. Alternatively, this Court should remand for reconsideration of the adverse inference and a new suppression hearing before a new judge.

PROCEDURAL HISTORY

Essex County Indictment Nos. 23-03-00533 and 23-03-00534 charge Defendant-Appellant Maurice D. Ross with offenses related to his alleged possession of a firearm. (Da 1-4) On January 8, 2025, Ross moved to suppress the firearm. (Da 5) On July 1, 2025, the Honorable Lori Ellen Grifa, J.S.C., issued an order denying Ross's motion to suppress after holding a testimonial

hearing. (Da 30-40) The defense filed a motion for leave to appeal the trial court's order, which this Court granted on August 26, 2025. (Da 41)

STATEMENT OF FACTS

Officer Benjamin Mauriello works for the city of Newark as a “Class II” “Newark Special Police Officer.” (1T 11-2 to 25, 15-5 to 18; 2T 8-6 to 17) He testified that he received the same “training as any other police officer in the state of New Jersey” (1T 11-2 to 6) and has the same authority to enforce the law, carry a firearm and make arrests. (1T 11-22 to 25, 26-19 to 27-4) According to Mauriello, “the only [difference] is when we get out of the academy, we have to find out own work.” (1T 11-7 to 8)

In 2022, Mauriello was working for the Newark Housing Authority, handling “[a]nything that happens criminally on Newark Housing Authority property[,] from tickets to domestic violence.” (1T 11-14 to 25) In that role, Newark provided him with a firearm and radio, but not a BWC. (1T 12-17 to 23)

Mauriello testified that at some time in 2022, Newark trained and tested him and other officers on the use of BWC. (1T 12-24 to 13-15) He said, “[W]e were supposed to get them, but we never got them.” (1T 13-6 to 9) The trial court interjected to confirm that they were “supposed to get body cams,” and Mauriello confirmed that they were. (1T 13-9) The prosecutor further clarified, “[Y]ou had a training because they were intending, at that time, to issue you a

body camera, but they never did?” (1T 13-12 to 15) Mauriello responded, “That’s correct.” (1T 13-15)

Mauriello testified that he bought his own BWC, along with some other equipment. (1T 13-21 to 14-7) He stated that he always had it with him but did not use it often – only when he remembered and for “hairy situations.” (1T 14-7 to 23, 29-16) If he deemed the recorded footage important, he would retain it on a USB. (1T 145-1 to 11)

On May 13, 2022, Mauriello and his supervisor from the Newark Housing Authority responded to complaints of narcotic sales and trespassing at a vacant complex of Terrell Homes. (1T 15-23 to 16-3) When they entered one of the buildings, they encountered two individuals and issued them trespassing warnings. (1T 16-3 to 2) Afterwards, the two individuals left the premises. (1T 17-7 to 16) Mauriello said he did not record the interaction, in writing or otherwise, because the individuals were not detained. (1T 17-7 to 16) He admitted that he could not remember if the individuals said anything to them and that he did not get their names. (1T 31-16, 33-20 to 23)

Mauriello testified that he and his supervisor returned to the same location the next day and saw who they believed were the same two individuals. (1T 18-1 to 24, 33-20 to 23) At that time, Mauriello decided to write them summons for trespassing and ordered them to sit down. (1T 18-1 to 24) He indicated that he

did not intend to arrest them at this point. (1T 34-14 to 16) Mauriello testified that one of the individuals, Ross, began fidgeting with his waistband, which led Mauriello to believe that Ross was hiding something, like a gun or narcotics. (1T 19-1 to 3, 49-9 to 25) Mauriello then “took [Ross’s] hand away” and “felt the butt of a gun.” (1T 19-5 to 6) Mauriello stated that he did not give any instructions or warnings prior to grabbing Ross’s hand. (1T 35-1 to 4) He then placed Ross under arrest. (1T 19-15)

Other officers from the Newark police department subsequently arrived. In their BWC footage, Mauriello is wearing a police uniform and a BWC. Mauriello said that he never turned the BWC on because “everything happened so fast” and he “didn’t really think about it.” (1T 21-1 to 20, 23-9 to 11) In the incident report, stop report and arrest report, Mauriello indicated that no BWC was assigned to him; he did not report that he was wearing a BWC. (1T 37-11 to 14, 40-17 to 41-1, 49-1 to 8) In the stop report, he checked off the box for indicating that there was no BWC footage of the incident, but he did not check off the separate box for indicating that he was wearing a BWC. (1T 48-1 to 49-1) He said that his failure to check the box for indicating that he was wearing a BWC “might have been a mistake.” (1T 49-1)

Mauriello's Newark Housing Authority supervisor,³ Michael Granger, corroborated part of Mauriello's testimony about the incidents that occurred on May 13, 2022 and May 14, 2022. (2T 8-19 to 14-20) However, Granger testified that after they found the two individuals on May 14, 2022, he went upstairs to check the other floors. (2T 13-14 to 14-14) As a result, he did not see the purported fidgeting. (2T 33-7 to 10) Granger did say, however, that he heard Mauriello tell someone to stop reaching and exclaim that he had found a gun. (2T 13-14 to 14-14)

With respect to the missing BWC footage, the State conceded during argument that according to the Attorney General guidelines, the City of Newark should have provided Mauriello with a BWC but claimed that Mauriello did not intentionally violate the statute or guidelines because the City failed to provide him with a camera and proper training. (2T 41-4 to 43-18) Thus, the State argued that the adverse inference did not apply or warrant suppression. (2T 41-4 to 43-18)

The State also argued that the detention and search were lawful. In support, it argued that Mauriello and Granger had observed Ross and another

³ Despite being his supervisor for the Newark Housing Authority, Granger testified that he did not have any authority over Mauriello as a police officer and that Mauriello would decide on his own whether or not to arrest someone. (2T 20-14 to 21, 29-13 to 17) Granger could not direct Mauriello to arrest anyone. (2T 20-14 to 21)

individual inside the vacant housing complex without permission on May 13, 2022 and had issued the individuals a trespassing warning. (Da 9-10, 12) Thus, the State contended that when Mauriello saw Ross and the other individual at the same location the following day, he had reasonable suspicion (or probable cause) to believe that the individuals were trespassing. (2T 38-5 to 40-2; Da 12) The State also claimed that Mauriello had reasonable suspicion to frisk Mauriello when he started fidgeting at his waistband and that the search was also lawful as a search incident to arrest. (2T 38-5 to 16; Da 12-14)

The defense contended that Mauriello, as a Class II officer, was required to wear a BWC. (2T 46-9 to 19) It contended that even if it was not the officer's fault that he was not issued a BWC, the BWC statute does not require a finding of bad faith or willful misconduct on the part of the individual officer. (2T 57-17 to 59-20) Where an officer is required to record an interaction and does not, a defendant is entitled to the rebuttable presumption of an adverse inference. (2T 57-17 to 59-20) In addition, the defense argued that in this case there was additional reason to question the officer's credibility: Mauriello omitted material information from his reports – that he was wearing and had failed to activate a BWC. (2T 62-7 to 63-17) Due to the misleading reports, the defense was unaware of these important facts until it reviewed BWC footage taken by other

officers that subsequently arrived at the scene. (2T 52-2 to 53-2, 53-10 to 56-8, 62-7 to 63-17)

The defense also contended that there was no lawful basis for the stop or the search. (Da 16-18) In support, it argued that Mauriello and Granger did not see Ross or warn him of trespassing on May 13, 2022 and therefore that there was no reasonable suspicion of trespassing on May 14, 2022. (Da 15-18) It also argued that the missing footage from May 14, 2022 would have shown that Ross did not make any fidgeting movements on May 14, 2022 and that there was no reasonable suspicion for a frisk. (Da 18, 22-24) Additionally, it contended that the search was not a lawful search incident to arrest because Mauriello had no intent to arrest Ross until after he found the gun. (Da 18, 27-28)

The trial court found that the BWC statute only applies to law enforcement officers that work for police agencies. (Da 36-40) The court found that because the Newark Housing Authority is not a law enforcement agency, Newark Housing Authority was not required to assign BWC and, in turn, Mauriello, as an employee of Newark Housing Authority, was not required to wear or use a BWC. (Da 36-40) Therefore, the defense was not entitled to an adverse inference. (Da 36-40)

Accordingly, despite the absence of a written report or video footage, the trial court credited Mauriello's and Granger's testimony that they had seen and

warned Ross that he could be cited or arrested for trespassing the previous day.

(Da 34-35) The court also credited Mauriello's testimony that he saw Ross fidgeting with his waistband. (Da 35) The court stated that Mauriello had reasonable suspicion to suspect Ross of trespassing because the housing complex was abandoned, there were signs prohibiting trespassing and Mauriello and Granger warned Ross that he could be cited for trespassing on the property.

(Da 34-35) Without finding Mauriello had reasonable suspicion that Ross was armed and dangerous, the court concluded that the frisk was also reasonable.⁴

(Da 34-35)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING THAT THE BWC STATUTE DID NOT APPLY TO THE SLEO. THIS COURT SHOULD EITHER ORDER SUPPRESSION OR REMAND FOR ANOTHER HEARING TO APPLY THE BWC STATUTE. (Da 30-40)

In 2020, the Legislature passed statutes governing law enforcement use of BWCs, N.J.S.A. 40A:14-118.3 et. seq. As this Court has recognized, the “clear purpose” of the statutes is to “ensur[e] the use of BWCs and the preservation of

⁴ It found that the search incident to arrest exception did not apply because Mauriello did not arrest, and had no intention to arrest, Ross until he found the gun. (Da 39)

BWC recordings as evidence in criminal prosecutions.” State v. Jones, 475 N.J. Super. 520, 534 (App. Div. 2023). In accordance with this broad remedial purpose, the BWC statutes generally require that “every uniformed State, county, and municipal patrol law enforcement officer shall wear a [BWC] that electronically records audio and video while acting in the performance of the officer’s official duties.” N.J.S.A. 40A:14-118.3. Furthermore, they require that “the video and audio recording functions of a [BWC] shall be activated . . . at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public” and “shall remain activated until the encounter has fully concluded and the officer leaves the scene.” N.J.S.A. 40A:14-118.5c(1). If “a law enforcement officer, employee, or agent^[5] fails to adhere to the recording or retention requirements . . . or intentionally interferes with a [BWC’s] ability to accurately capture audio or video records,” “there shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured.” N.J.S.A. 40A:14-118.5q(2). The Attorney General has statutory authority to promulgate or revise

⁵ An agent may include “a third party” “authorize[d] . . . to act as its agent.” N.J.S.A. 40A:14-118.5p. Such agents are required to comply with the same statutory requirements. Id.

guidelines “to implement and enforce the provisions” of the BWC statutes.

N.J.S.A. 40A:14-118.4.

For the reasons set forth below, Mauriello, as a Class II SLEO, was subject to the requirements of the statutes. Because he did not adhere to the recording requirements and because the defense has reasonably asserted that exculpatory evidence was not captured, the court erred in not applying the adverse inference. Presuming that the missing footage from May 13, 2022 would have shown that Mauriello and Granger did not stop and issue Ross a trespassing warning and that the missing footage from May 14, 2022 would have shown that Ross did not fidget with his waistband in a manner that was indicative of possessing a gun, the stop and the frisk were unlawful. This Court should apply the adverse inference and order suppression or, at minimum, remand for the trial court to apply the presumption. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, ¶ 7; Wong Sun v. United States, 371 U.S. 471, 484 (1963).

A. SLEOs Are Subject to the Requirements of the BWC Statutes.

This Court should find that SLEOs like Mauriello are subject to the requirements of the BWC statutes. First, the plain language of the statutes clearly applies to SLEOs. Second, the Attorney General, who has authority to implement guidelines to enforce the statutes, has interpreted the statutes to apply to SLEOs. Third, to the extent there is ambiguity in the statute, extrinsic

evidence demonstrates that the Legislature would have wanted the statute to be interpreted in accordance with its broad remedial purpose.

In interpreting a statute, “[t]he overriding goal . . . is to determine and give meaning to the Legislature’s intent.” State v. Carter, 247 N.J. 488, 513 (2021). “The plain language of a statute is the best indicator of the statute’s meaning, and statutory words should be read as they are commonly used and ordinarily understood.” State v. Scriven, 226 N.J. 20, 34 (2016). “If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources.” State v. D.A., 191 N.J. 158, 164 (2007). Courts may “turn to extrinsic evidence in limited circumstances, such as when ‘there is ambiguity in the statutory language that leads to more than one plausible interpretation’” or when “a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language.” Id. (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). Remedial statutes, in particular, should be construed broadly in accordance with their remedial purpose. See Lourdes Med. Ctr. of Burlington Cnty. v. Bd. of Rev., 197 N.J. 339, 364 (2009); Barratt v. Cushman & Wakefield of New Jersey, Inc., 144 N.J. 120, 126–27 (1996); Shaw v. Shand, 460 N.J. Super. 592, 608–09 (App. Div. 2019).

It is clear from the plain language of the BWC statute that it applies to SLEOs like Mauriello. The BWC statute provides that “every uniformed State, county, and municipal patrol law enforcement officer shall wear a body worn camera that electronically records audio and video while acting in the performance of the officer’s official duties.” N.J.S.A. 40A:14-118.3. The statute defines “law enforcement officer” as “a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.” N.J.S.A. 40A:14-118.5a. It states that “[t]his term shall not include a correctional police officer.” Id. It does not exclude SLEOs. See id.

The hiring of special police officers by a municipality and the conditions, terms, and limitations of their employment are governed by the SLEOs’ Act. In re Special Police Officers, 354 N.J. Super. 269, 272–73 (App. Div. 2002) (citing N.J.S.A. 40A:14-146.8 to -146.18); N.J.S.A. 40A:146.10 (empowering municipalities to appoint SLEOs). SLEOs include “any person appointed pursuant to this act to temporarily or intermittently perform duties similar to those performed regularly by members of a police force of a local unit.” N.J.S.A. 40A:14-146.9. A “local unit” is a municipality that has established a regular police force. N.J.S.A. 40A:14-146.9(c). Class II SLEOs, in particular, are “authorized to exercise full powers and duties similar to those of a permanent,

regularly appointed full-time police officer.”⁶ N.J.S.A. 40A:14-146.11. See also In re Special Police Officers, 354 N.J. Super. 269, 272–73 (App. Div. 2002) (“Class Two officers are authorized to perform, within the municipality, all of the duties of a regular police officer and may, if so authorized by the municipality, carry and use firearms after being fully certified as having successfully completed the required training.”).

SLEOs obtain their authority from and are supervised by the chief of police or chief law enforcement officer of the municipality. The law provides: “The chief of police or other chief law enforcement officer of the local unit wherein the officer is appointed, may authorize SLEOs when on duty to exercise the same powers and authority as permanent, regularly appointed police officers of the local unit, including, but not limited to, the carrying of firearms and the power of arrest.” N.J.S.A. 40A:14-146.15 Accordingly, SLEOs must operate “under the supervision and direction of” the chief of police or chief law enforcement officer of the local unit. N.J.S.A. 40A:14-146.14c. Critically, the

⁶ Another statute specifically allows for the creation of a housing authority police force by local ordinance. N.J.S.A. 40A:14-146.19. It provides that “housing authority police officers appointed pursuant to this act shall be deemed regular law enforcement officers.” N.J.S.A. 40A:14-146.19. It is not clear from the record, or from a search of the municipality’s ordinances posted on its website, that Newark Housing Authority has such a police force, and the testimony indicates that Mauriello is a SLEO, not a regular law enforcement officer. Nevertheless, Mauriello is still appointed by the city and is authorized to perform the duties of a regular officer.

law specifically requires that SLEOs “comply with the rules and regulations applicable to the conduct and decorum of the permanent, regularly appointed police officers of the local unit, as well as any rules and regulations applicable to the conduct and decorum of SLEOs,” N.J.S.A. 40A:14-146.14d, including wearing a uniform, N.J.S.A. 40A:14-146.12.

Given the role of SLEOs as defined by statute, it is clear as a matter of law that such officers are “person[s] whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State” and therefore that they are “law enforcement officers,” as the term is defined by the BWC statute. See N.J.S.A. 40A:14-118.5a. Class II SLEOs, in particular, have the same authority and obligation to investigate unlawful activity and make arrests. See N.J.S.A. 40A:14-146.11.

Mauriello’s testimony likewise demonstrates that he is a law enforcement officer according to the definition provided by the BWC statute. He testified that he has the same authority to stop, detain, and arrest someone as any other law enforcement officer. (1T 26-13 to 27-4) He further testified that he receives the same training as any other law enforcement officer and is permitted to carry a firearm while he is on duty. (1T 26-13 to 27-4)

Furthermore, SLEOs, like Mauriello, are not just law enforcement officers but are, more specifically, “uniformed State, county, and municipal patrol law enforcement officers,” required to wear BWCs. They are appointed to their positions by a municipality, obtain their authority from the chief of police of the municipality, are supervised by the chief of police of the municipality, and are subject to the same expectations and rules as other regularly-appointed officers, including wearing a uniform. See State v. Tindell, 417 N.J. Super. 530, 540 (App. Div. 2011) (“Special police officers are employed by local units of government under the provisions of N.J.S.A. 40A:14–146.10. . . . Here, the jury heard testimony that special police officers perform the same duties and have the same law enforcement powers as regular police officers employed by the City of Newark. The only difference between the two is that special police officers are not part of the civil service system.”); Jordan v. Harvey, 381 N.J. Super. 112, 116 (App. Div. 2005) (referring to SLEOs, along with municipal police officers and police chiefs, as “police hires,” and holding that a municipality can only appoint and accord law enforcement powers to an employee with specific statutory authority); N.J.S.A. 40A:14-146.12 (requiring SLEOs to wear a uniform).

In fact, the Department of Law and Public Safety Act of 1948, which provides for licensing and training requirements for all law enforcement

officers, defines State, county, or municipal law enforcement officers to include all classes of SLEOs. It states that law enforcement officers are “any person who is employed as a sworn member of any State, county, or municipal law enforcement agency, department, division, or instrumentality of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of the State.” N.J.S.A. 52:17B-67. It is clear that “[t]his term shall include, but is not limited to . . . SLEOs of all classes pursuant to P.L.1985, c.439 (C.40A:14-146.8 et seq.).” N.J.S.A. 52:17B-67. Accordingly, the Legislature understands State, county or municipal law enforcement officers to include SLEOs of all classes. See id.

If the Legislature had wanted to exempt SLEOs from the BWC statute’s requirements, it would have done so. Because the term “law enforcement officer” might have otherwise been construed to include correctional officers – and given that the Department of Law and Public Safety Act expressly defines State, county and municipal law enforcement officers to include correctional officers – the Legislature excluded “correctional officers” from the term for the purposes of the BWC statute. N.J.S.A. 40A:14-118.5a. In contrast, even though SLEOs satisfy the definition of the BWC statute and are also expressly included within the definition of State, county and municipal law enforcement officers

set forth in the Department of Law and Public Safety Act, the Legislature did not exclude them from the BWC statute's requirements. It did not say that law enforcement officers did not include SLEOs, nor did it define the term to only include full-time, regularly-appointed law enforcement officers.

In finding that the statute only applied to law enforcement officers that were employed by a law enforcement agency, the trial court imposed a limitation on the BWC law that is not based on any statutory text. While the statute says that all "uniformed State, county and municipal patrol law enforcement officers" must wear a BWC, contrary to the trial court's decision, it does not say that those officers must be employed by a law enforcement agency; all it requires is that the law enforcement officer is a uniformed State, county or municipal law enforcement officer authorized to investigate criminal activity. It is not the proper function of the court to "'engraft requirements' on a statute 'that the Legislature did not include. [Rather,] [i]t is [the court's] role to enforce the legislative intent as expressed through the words used by the Legislature.'"

Jones, 475 N.J. Super. at 531 (quoting Lippman v. Ethicon, Inc., 222 N.J. 362, 388 (2015)). When the Legislature passed the BWC laws, requiring officers to use BWCs and providing for an adverse inference, it did not condition any such requirement or relief based on the agency the officer worked for. Thus, the trial court should not have added such a limitation here.

The Attorney General's reading of the statute confirms the plain reading of the BWC statute. The Legislature gave the Attorney General statutory authority to implement guidelines to enforce the BWC statute and those Guidelines specifically name SLEOs as covered parties. Section 3.2(a) of the AG Guidelines states that all "uniformed patrol officers while acting in the performance of official duties" must wear BWCs, including "uniformed officers assigned to traffic law enforcement, as well as Class II SLEOs (SLEO IIs) assigned to patrol or traffic law enforcement duties." (Emphasis added). As recognized by the Attorney General Guidelines, Mauriello, as a person appointed by Newark as Class II SLEO and tasked with investigating criminal activity on Newark Housing Authority property, satisfies the definition of the statute.

Finally, if there is any ambiguity at all that SLEOs are State, county or municipal law enforcement officers, that ambiguity should be construed in accordance with the Legislature's remedial purpose in promulgating the statute. Lourdes Med. Ctr. of Burlington Cnty., 197 N.J. at 364; Barratt, 144 N.J. at 126–27; Shaw, 460 N.J. Super. at 608–09. As discussed above, this Court has already held that the "clear purpose" of the law is to "ensur[e] the use of BWCs and the preservation of BWC recordings as evidence in criminal prosecutions." Jones, 475 N.J. Super. at 534 (construing the rebuttable presumption of the BWC

statute to apply to suppression hearings and rejecting an argument that it should be limited to trials). Furthermore, the relevant Attorney General Guidelines and legislative history also recognize the importance of recording and preserving BWC footage, and that the statutes' broad purpose is to facilitate use and preservation of such footage.⁷ Attorney General Law Directive No. 2022- 1, Update to Body Worn Camera Policy, § 1.1 (Jan. 19, 2022) ("[BWC] footage provides objective evidence of what occurred and plays a crucial role in the public discourse around police accountability. BWCs also serve as a powerful deterrent to misconduct.”).

If the trial court's interpretation is adopted, the Legislature's purpose in promulgating the statute will be significantly undermined. Mauriello is not the only law enforcement officer who does not work for a police department; there

⁷ See also N.J. Gov. Statement to S.B. 1163 (Oct. 19, 2020) ("I share the sponsors' goal of promoting transparency and accountability in policing in our communities. Body worn cameras . . . improve accountability; promote transparency; enhance the quality of police-civilian interactions and law enforcement performance; contemporaneously record objective, impartial evidence for use in investigations, disciplinary matters, and court proceedings . . ."); Exec. Order No. 201 (Nov. 24, 2020), 2 N.J.R. 2158(a) (Dec. 21, 2020) ("WHEREAS, the Attorney General has sought . . . to promote the professionalism, accountability, and transparency . . . ; and WHEREAS, ensuring trust between the police and the communities they serve is a critical component of public safety; . . . and WHEREAS, the deployment of body worn camera systems . . . can be a powerful tool for building community trust, both by creating a record of law enforcement professionalism in interactions with the public, and by providing evidence of officer misconduct when it does occur . . .").

is an entire statutory regime surrounding the class of SLEOs. And every single Class II SLEO is qualified to carry a firearm, stop individuals, investigate their activities, and make arrests just like a regular law enforcement officer. It makes little sense for the entire set of SLEOs to be exempted from the requirements of the BWC law, when all the reasons for the law to apply to regular law enforcement officers apply with equal force to SLEOs, or at least Class II SLEOs. This result would be particularly absurd, given that SLEOs are statutorily required to “comply with the rules and regulations applicable to the conduct and decorum of the permanent, regularly appointed police officers of the local unit, as well as any rules and regulations applicable to the conduct and decorum of SLEOs.” N.J.S.A. 40A:14-146.14d.

On the contrary, including Class II SLEOs within the set of officers required to wear BWCs is far more consistent with the law’s purpose of ensuring the use of BWCs in criminal prosecutions. Mauriello was the only law enforcement officer present when Ross was stopped. Had Mauriello used a BWC to record the interaction, there would be no ambiguity as to whether any stop or search was justified. That result would have been completely in line with the purpose of the BWC laws.

The trial court’s decision to exclude Officer Mauriello from the law’s requirements creates a class of officers who can exercise law enforcement

powers without being subject to the BWC requirements. This was not the Legislature's intent. The trial court's decision to exempt Mauriello from the BWC requirement was incorrect as a matter of law.

B. This Court Should Order Suppression. Or at the Very Least, It Should Remand for a New Suppression Hearing Before a New Judge.

This Court should reverse the trial court's decision and order suppression. To temporarily detain a suspect, the police must have a reasonable belief, based on particularized and objective facts, that the suspect was or is involved in criminal activity. United States v. Cortez, 449 U.S. 411, 695 (1981); State v. Thomas, 110 N.J. 673, 678 (1988). To frisk a suspect, the police need particularized and objective reason to believe that a person is armed and dangerous. Terry, 392 U.S. at 27; Thomas, 110 N.J. at 677. Those standards were not satisfied here, requiring suppression of the evidence.

First, suppression is warranted because the officer did not supply sufficient objective basis to believe that Ross was armed and dangerous. Mauriello testified that the purported fidgeting made him believe that Ross had some kind of contraband on his person, but he did not say why the purported fidgeting made him believe that Ross possessed a gun, as opposed to some other contraband like narcotics. In fact, he stated that the fidgeting made him believe that Ross possessed some kind of contraband, such as narcotics or a gun. (1T

51-22 to 52-2) He did not articulate a specific reason to believe Ross was armed and dangerous.

Nor did the trial court even make a finding that Mauriello had reasonable suspicion to believe that Ross was armed and dangerous. The court explained why it believed that Mauriello had reasonable suspicion to believe that Ross was engaged in trespassing, which warranted a stop, but it did not explain why – or even say that – Mauriello had reasonable suspicion to believe that he was armed and dangerous. (Da 35) Instead, the trial court seemed to assume that because the stop was lawful, the frisk was too. But that, of course, is not the law. See Thomas, 110 N.J. at 678-79 (“[W]hether there is good cause for an officer to make a protective search incident to an investigatory stop is a question separate from whether it was permissible to stop the suspect in the first place.”); see also State v. Walker, 282 N.J. Super. 111, 115 (App. Div. 1995) (“[T]he frisk is a separate and distinct Fourth Amendment intrusion that must be based on an individualized suspicion that the suspect is carrying a concealed weapon.”). For these reasons alone, this Court could find that the trial court erred in finding the frisk lawful.

But suppression was also warranted because the trial court erred in refusing to apply the adverse inference. The only potential basis to believe that

Ross was armed and dangerous was the purported fidgeting at the waist.⁸ (2T 32-20 to 33-10, 33-24 to 34-17) Had the adverse inference been properly granted, the trial court would have been required to infer that the missing BWC footage would have shown that Ross made no such fidgeting movements, and thus that Mauriello did not have reasonable suspicion for the frisk.

Likewise, had the trial court applied the BWC statute, it would have been required to infer that the missing BWC footage would have shown that Mauriello did not issue Ross a trespassing warning on May 13, 2022. Accordingly, Ross did not have adequate notice or knowledge that he was trespassing, and Mauriello did not have reasonable suspicion or probable cause to believe Ross was a defiant trespasser or a lawful basis for the stop on May 14, 2022. See N.J.S.A. 2C:18-3 (requiring that defendant have knowledge that they are trespassing and are given adequate notice of the same). Thus, for this reason, too, suppression is required.

If the Court is not inclined to order suppression, however, it should remand for a new suppression hearing and direct that the trial court consider the adverse inference as directed by N.J.S.A. 40A:14-118.5(q). Additionally, this Court should order that “a new judge preside over the suppression hearing on

⁸ In fact, the other individual with Ross was cited for trespassing, but not arrested. (Dmb 19)

remand,” “as the judge made credibility findings and may be committed to her previous view of the evidence.” State v. Haskins, 477 N.J. Super. 630, 647 (App. Div. 2024) (citing State v. Jones, 475 N.J. Super. 520, 534 (App. Div. 2023)); see also State v. Jones, 475 N.J. Super. 520, 534 (App. 21 Div. 2023) (requiring suppression hearing be assigned to new judge as motion judge weighed evidence and made credibility findings).

CONCLUSION

This Court should either reverse the trial court’s order denying suppression and order suppression, or remand for a new suppression hearing before a new judge.

Respectfully submitted,

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BY: /s/ Ashley Brooks
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Dated: October 17, 2025

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November 24, 2025

LETTER BRIEF AND APPENDIX ON BEHALF OF THE STATE

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Maurice D. Ross (Defendant-Appellant)
Docket No. A-004138-24 Team 03

Criminal Action: On Leave to Appeal an Order Denying a Motion to Suppress, entered in the Superior Court of New Jersey, Law Division, Essex County.

Sat Below: Hon. Lori E. Grifa, J.S.C.

Honorable Judges:

Pursuant to R. 2:6-2(b), please accept this letter in lieu of a formal brief on behalf of the State.

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Preliminary Statement

The defendant seeks to extend New Jersey's body-worn camera (BWC) statute to encompass auxiliary police, who are essentially independent contractors that do not work for law enforcement agencies. To require such officers to wear, maintain, and download BWCs would be beyond the scope of the plain language of the statute.

Counterstatement of Facts

On the night of May 13, 2022, Special Police Officer Benjamin Mauriello ("SPO Mauriello"), who worked for the Newark Housing Authority ("NHA"), encountered the defendant and another man trespassing on a mostly vacant complex that was NHA property. (1T 11:2-16, 15:20 to 16:21).¹ SPO Mauriello was on patrol with Michael Grainger, the assistant director in charge of security for the NHA. (2T 6:8-16, 8:25 to 10:7). SPO Mauriello warned the defendant that he could be arrested for trespassing and the defendant was sent away. (1T 16:15 to 17:16).

The next night, SPO Mauriello and Grainger again encountered the defendant and the other man on the same property. (1T 17:17 to 18:15). SPO Mauriello told the defendant to sit down while he gathered his information. (1T 18:16-22). When SPO Mauriello saw the defendant fidgeting with his

¹ The State adopts the defendant's transcript designation codes. See (Db ii).

wristband, he grabbed the defendant's hand and felt a handgun in his waist. (1T 18:25 to 19:19). He then recovered a handgun from the defendant's waistband and placed the defendant under arrest. (1T 19:12-19). SPO Mauriello then called the Newark Police Department and turned the defendant over to them. (1T 20:4-11).

SPO Mauriello testified that he was not issued a body-worn camera (BWC), but he had purchased his own. (1T 12:24 to 14:7). He testified that he did not activate it for this incident because "Everything happened so fast" that he simply "didn't really think about it." (1T 23:9-11).

Counterstatement of Procedural History

On March 7, 2023, an Essex County Grand Jury indicted the defendant on two counts: second-degree unlawful possession of a handgun and second-degree possession of a handgun by a convicted felon. (Da 1-4).

The defendant moved to suppress the handgun and the trial court conducted an evidentiary hearing over two days during which SPO Mauriello and Mr. Grainger testified. (1T, 2T). On July 1, 2025, the court denied the motion. (Da 30-40). On August 25, 2025, this Court granted leave to appeal. (Da 41).

Legal Argument

Point I

The trial court properly declined to impose a presumption against the State.

The trial court properly ruled that the defendant was not entitled to a presumption that the missing BWC footage included exculpatory evidence.

The BWC statute, N.J.S.A. 40A:14-118.5(q)(2), provides:

[i]f a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this act, or intentionally interferes with a [BWC]'s ability to accurately capture audio or video recordings: . . . (2) there shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured.

Although this presumption applies at suppression hearings, State v. Jones, 475 N.J. Super. 520 (App. Div. 2023), the trial court properly held that it did not apply to the facts in this case. As the trial court properly ruled, SPO Mauriello testified that he was a Special Police Officer employed by the NHA, not a law enforcement agency.² Thus, the statute does not apply to him.

² The NHA, since 1938, has provided “quality housing and services to the community” of Newark. See Newark Housing Authority, available at: newarkha.org (last accessed Nov. 21, 2025). Its mission is guided by “a steadfast commitment to nurturing thriving communities through the provision of quality, affordable housing.” Id. at Our Mission, available at: newarkha.org/About-Us (last accessed Nov. 21, 2025).

Special Police Officers receive police training but are not employed by a police agency and are therefore required to find their own employment after graduating from the police academy. (1T 11:4-8). They are essentially independent contractors with police training. They are not “law enforcement officers” as defined by the statute. See N.J.S.A. 40A:14-118.5 (defining a “law enforcement officer” as “a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.”).

The trial court relied on N.J.S.A. 40A:14-118.3, which provides that “every uniformed State, county, and municipal patrol law enforcement officer shall wear a body worn camera...” Because SPO Mauriello worked for the NHA and not a State, county, or municipal law enforcement agency, the body-worn camera requirement did not apply to him.

The reason the SPOs are not required to wear BWCs is clear: because they are not employed by law enforcement agencies, to require such officers to wear and maintain body-worn cameras would force non-law-enforcement agencies such as the NHA to implement programs to supply, maintain, and download the cameras.

Similarly unconvincing is the defendant’s assertion that the Attorney General Guidelines required SPO Mauriello to have a BWC. Under section

3.2, the Guidelines enumerate which officers are required to be equipped with BWCs, including “Class II Special Law Enforcement Officers (SLEO IIs) assigned to patrol or traffic law enforcement duties.” (Dma 42). But the Guidelines require “every law enforcement agency” to “promulgate and enforce a policy.” (Dma 42). The Guidelines go on to discuss law enforcement officers “employed by the [law enforcement] agency” using only BWCs that had been “issued and approved by the [law enforcement] agency.” Like the statute, the Guidelines only apply to law enforcement agencies, not the NHA. Because SPO Mauriello was working for the NHA and was not “employed” by a “law enforcement agency,” the Guidelines did not apply to him. SPO Mauriello was never issued a BWC by any law enforcement agency.

Point II

Even if the trial court had erroneously applied the presumption, the evidence was still properly seized and would not have been suppressed.

SPO Mauriello testified that he stopped the defendant for trespassing after having warned him the day before. The defendant does not dispute that the stop was warranted. SPO Mauriello then reached for the defendant’s waistband in response to the defendant’s furtive actions. The recovery of the defendant’s gun was clearly appropriate.

An appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record. State v. Elders, 192 N.J. 224, 243 (2007). An appellate court should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy. Id. at 244.

There was ample credible evidence in the record to support the trial court's factual findings. SPO Mauriello testified credibly and his testimony was corroborated by a second witness, Michael Grainger from the NHA. Grainger testified that while he didn't see the defendant fidgeting or the search in question, he heard SPO Mauriello tell the defendant to "stop reaching" during the encounter right before SPO Mauriello recovered the gun. (2T 14:1-10). The trial court found SPO Mauriello's and Mr. Grainger's testimony to be credible. (Dma 74). The trial court's factual findings must be accepted because they are amply supported by the record. State v. S.S., 229 N.J. 360, 374 (2017).

In order to justify a warrantless stop, police must have specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity. State v. Mann,

203 N.J. 328, 338 (2010). Because the determination of reasonable and articulable suspicion is fact-sensitive, a careful review of the totality of the circumstances surrounding each case is required. Id.

There is no dispute that the defendant was properly stopped because he was trespassing. “Whether a police officer's protective search for weapons is justified is a separate question from whether the stop was permissible in the first place.” State v. Valentine, 134 N.J. 536, 542 (1994). The standard is an objective one: “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” Id. at 543 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)).

SPO Mauriello’s frisk of the defendant was entirely proper because any reasonably prudent person in his situation would have believed that the defendant was armed. Mr. Grainger testified that the NHA received “numerous complaints” about “prostitution, drug-dealing, homelessness, vagrants taking over the complex, stealing copper” from the apartment complex where the defendant was arrested. (2T 9:3-11). The defendant was stopped while trespassing for a second night in a row in a mostly vacant apartment complex. The defendant was stopped at “roughly 11:30 pm.” (2T 31:12-18). The defendant was fumbling with his waist area, which SPO Mauriello testified was usually an indicator of narcotics or a weapon. (1T

51:20 to 52:2). SPO Mauriello also testified that he had 16 years of experience as a SLEO at the time of this arrest. (1T 11:2-11). The frisk was reasonable in light of all of the surrounding circumstances that showed SPO Mauriello reasonably believed that his safety and the safety of others in the area was in danger.

Even if the trial court had applied the presumption, the presumption would have been overcome by the credible testimony of SPO Mauriello and Mr. Grainger. The two witnesses testified completely consistently on two dates months apart. The trial court found that their testimony was “direct, concise, internally consistent, and simply made sense.” (Da 35). Both witnesses testified that the defendant and another man were trespassing at night in mostly vacant housing complex that was the basis of numerous complaints of criminality. The presumption that exculpatory evidence was not captured can be overcome by “very credible testimony.” State v. Jones, 2025 N.J. Super. Unpub. LEXIS 1726, *16 (App. Div. 2025) (attached hereto as Pa 1 – Pa 6). Such is the case here.

Conclusion

The trial court properly denied the defendant's motion to suppress and properly declined to apply the statutory presumption suggested by the defendant because SPO Mauriello was not required to wear a BWC. This Court must affirm the denial.

Respectfully submitted,

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December 15, 2025

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4138-24
INDICTMENT NO. 23-03-00533-I and
23-03-00534-I

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of the Conviction of the Superior Court of New Jersey, Law Division, Essex County.
v.	:	Sat Below: Hon. Lori Ellen Grifa, J.S.C.
MAURICE D. ROSS,	:	
Defendant-Appellant.	:	

DEFENDANT IS CONFINED

Your Honors:

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

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

The defense relies on the procedural history and statement of facts set forth in its opening brief.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD SUPPRESS OR AT LEAST REMAND FOR A NEW JUDGE TO APPLY THE ADVERSE INFERENCE AND MAKE NEW FACTUAL FINDINGS.

The defense relies on the arguments set forth in its opening brief and only adds the limited comments in response to arguments made by the State. As an initial matter, contrary to the State's argument, the defense is contending that the missing BWC footage would have also shown that the stop, as well as the frisk, was not lawful. (Da 15-18; Db 23-25)¹ Additionally and also contrary to the State's argument, because the trial judge improperly concluded that the rebuttable presumption afforded by body-worn camera statute is not applicable to special law enforcement officers, the minimum remedy required is a remand to a new judge to consider the rebuttable presumption and to make new factual findings. See State v. Jones, 475 N.J. Super. 520, 534 (App. Div. 2023) (requiring ordering this remedy where the trial judge erroneously concluded that the adverse inference was

¹ Da – Defendant's appendix
Db – Defendant's opening brief

inapplicable to suppression hearings). It would not be appropriate for an appellate court to find that the trial court would have still considered the officers' testimony credible, had it applied the rebuttable presumption warranted by the body-worn camera statute. See id.; see also State v. Micelli, 215 N.J. 284, 293–94 (2013) (reversing where the appellate court exercised original jurisdiction in making factual findings and weighing the evidence, in violation of R. 2:0-15, and explaining that appellate courts should not exercise original jurisdiction to resolve credibility issues or subjective evaluations of the evidence). Appellate courts do not make factual findings of that kind on appeal, and such an approach would significantly and inappropriately nullify the remedial effect of the body-worn camera statute.

CONCLUSION

For the reasons set forth in Mr. Ross' original brief and added here, this Court should either suppress the evidence or remand for a new suppression hearing before a new judge.

Respectfully submitted,

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Attorney for Defendant-Appellant

BY: /s/ Ashley Brooks
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Dated: December 15, 2025