

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2400-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LEVI N. ADAMS,

Defendant-Appellant.

Submitted March 8, 2018 — Decided May 21, 2018

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Cumberland County, Indictment
Nos. 16-01-0049 and 16-02-0095.

Joseph E. Krakora, Public Defender, attorney
for appellant (Daniel S. Rockoff, Assistant
Deputy Public Defendant, of counsel and on the
brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Adam D. Klein, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

Following the denial of his motions to suppress, defendant
Levi N. Adams pled guilty under Indictment No. 16-01-0049 to third-

degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1), and under Indictment No. 16-02-0095 to second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) and N.J.S.A. 2C:58-4. On appeal, defendant raises the following arguments:

POINT I

THE COURT ERRED BY DENYING [DEFENDANT'S] MOTIONS TO SUPPRESS. U.S. CONST., AMENDS. IV, XIV; N.J. CONST., ART. I, [¶] 7.

- A. The Trial Court Erred By Denying [Defendant's] Motion To Suppress Evidence Related To Indictment [No.] 16-01-[00]49.
- B. The Trial Court Erred By Denying [Defendant's] Motion to Suppress Evidence Related To Indictment [No.] 16-02-95.

We reject these arguments and affirm.

I.

The Motion to Suppress Evidence
Related to Indictment No. 16-01-0049

At approximately 2:10 p.m. on August 19, 2015, Sergeant Shawn Matos and Detective Phillips from the City of Millville Police Department were patrolling in an unmarked patrol car in the area of Buck and Green Streets in search of a burglary suspect. The area is a high-crime, high drug area known for open-air narcotics transactions. The officers saw defendant straddling a bicycle and interacting with a Caucasian female. Matos knew defendant from a

previous arrest in the same area in 2010 for possession of weapons (several large kitchen knives and a hatchet). Matos had also recently received information from a confidential informant (CI), with whom he was personally familiar, that defendant kept CDS on his person for the purpose of illegal drug distribution.

As the officer drove by defendant, Matos observed him and the female exchange what appeared to be small items in a hand-to-hand transaction. Based on his education, training, and experience, Matos believed he had observed a narcotics transaction. Defendant and the female separated when they saw the officers' patrol car make a U-turn. While driving away on his bicycle, defendant made a backhand waive to the female to leave the area. Defendant rode away on Green Street and the female walked in the opposite direction. The officers decided to follow defendant and investigate what they had observed.

Defendant rode into a deli parking lot on Green Street, followed by the officers. As defendant dismounted his bicycle, Matos exited his vehicle, ordered defendant to stop, and told defendant what he had observed. Defendant appeared nervous while speaking to Matos. Based on his prior encounter with defendant in 2010, Matos decided to pat down defendant for his safety to make sure defendant had no weapons on him.

Matos told defendant he was going to pat him down for safety reasons and asked him to place his hands on his head. Defendant complied. Matos then went around to defendant's back and saw a whitish plastic baggie protruding from defendant's left pocket. Based on his training and experience, Matos believed the baggie contained a CDS. When Matos told defendant he saw the baggie, defendant attempted to place his left hand in his left pocket. Matos told defendant not to move, and defendant complied. Matos then secured the baggie, which was later found to contain a CDS. Matos patted down defendant and found no weapons on him. Matos then arrested defendant, checked for warrants, and found defendant had nine outstanding warrants for his arrest.

A grand jury indicted defendant under for third-degree possession with the intent to distribute a CDS within 1000 feet of school property, N.J.S.A. 2C:35-7; third-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5(b)(3); third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1); second-degree possession with intent to distribute heroin while on or within 500 feet of the real property comprising a public housing facility, a public park, or a public building, N.J.S.A. 2C:35-7.1(a); and third-degree possession of a CDS (cocaine), N.J.S.A. 2C:35-10(a)(1).

Defendant filed a motion to suppress, arguing the police lacked a reasonable and articulable suspicion to stop and search him. In an oral opinion, Judge Cristen P. D'Arrigo made detailed factual findings and concluded as follows:

The standard is reasonable [and] articulable suspicion of a crime. In this particular case, in the totality of the circumstances, [Matos] had prior information that [defendant] was involved in the exchange or sale of narcotics, that he carried the narcotics on him. [Matos] observed [defendant] at the corner in a hand[-]to[-] hand transaction with another individual while [Matos] was driving in a car that everybody knows is a police car.

As [Matos] drives by and as he's watching [defendant and the female], they separate. As the car goes to turn around [Matos] notices [defendant] waves the female off, don't come near. All of these are elements of reasonable [and] articulable suspicion of a drug transaction having just occurred. At that point, an investigative detention is authorized. There is reasonable [and] articulable suspicion authorizing the police officers to approach the [d]efendant.

When [Matos] approaches he announces that he's going to give a pat down predicated upon his prior experience [with defendant]. Under the circumstances here, having arrested an individual at night with knives and a hatchet on him, it is reasonable to perform a Terry¹ pat down for officer safety, but that is a red herring. That's not what happened here because before that occurs, [Matos] observes the white plastic ba[ggie] in [defendant's] pocket.

¹ Terry v. Ohio, 392 U.S. 1, 27 (1968).

At that point there exists probable cause to believe that [the] bag[gie] contains CDS. The totality of the circumstances, the prior information, the high crime area, the hand[-]to[-]hand transaction, the location of a bag[gie] consistent with how individuals who sell narcotics store them on their person all creates probable cause to seize the bag[gie] from [defendant's] pocket.

At that point when [Matos] pulls the bag[gie] out and sees what it is, [there was] probable cause for [defendant's] arrest. No Terry search occurred. The item was not recovered as a result of a Terry frisk.

In the alternative, Judge D'Arrigo found that even if Matos had patted down defendant and found no baggie or weapons, he would have discovered defendant had active warrants and a search incident to defendant's arrest for those active warrants would have inevitably led to the discovery of the plastic baggie.

The Motion to Suppress Evidence
Related to Indictment No. 16-02-0095

At 6:30 p.m. on November 4, 2015, Millville Police Officers Joshua Smith and Colt Gibson received a dispatch call about a shoplifting incident at a store located in an area for known for weapons, CDS, and violent crimes. A store employee described the suspect as a "large" African-American male wearing red pants and a black hooded sweatshirt. Gibson testified that when he responded to the area, he saw an African-American male wearing red pants and a white T-shirt walking on the street in close proximity to the

store. When Gibson, who was in uniform, approached the individual, he sped up walking and then "took off running."

A passerby told Gibson the individual in the red pants ran to a residence. When Gibson arrived there, he saw that other officers had detained the individual, later identified as defendant, after he emerged from the residence. Defendant was wearing red pants and a white T-shirt. Gibson knew defendant from previous arrests, including the arrest in 2010 for possession of weapons. Another officer conducted a Terry frisk for weapons and found only a crack pipe. The police arrested defendant and handcuffed him. Smith then searched defendant before placing him in a patrol car and found a handgun in his waistband and more CDS on his person. The police later determined defendant was not the shoplifter.

A grand jury indicted defendant for second-degree possession of an handgun without a having a permit to carry, N.J.S.A. 2C:39-5(b), and third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1). Defendant filed a motion to dismiss, arguing the stop was illegal because totality of the circumstances did not amount to reasonable suspicion for the stop or probable cause for his arrest and search.

In an oral opinion, Judge D'Arrigo made detailed factual findings and concluded as follows:

Now, the question becomes whether or not there is a reasonable and articulable suspicion that would cause Officer Gibson to approach the individual. Now, at this point in time much has been made by the [d]efense of the word "large" in the description of the perpetrator of the shoplifting. The problem with the word large is it's not very specific. Large tall? Large wide? What does large exactly mean?

The [d]efendant in this case has been represented to be 5'4". I have no reason the disbelieve that he's 5'4". I wouldn't describe him as a tall individual, but in the midst of an investigation there are significant indications that would cause . . . [Gibson] to make an investigative detention of the individual involved and they are specifically, [n]umber [o]ne, the location where the encounter took place. [Gibson's] . . . interactions not only with the individual he encountered who he believed to be the suspect who he was pursuing, but also the [passerby] her came across who directed him towards the residence from which emerged [defendant].

Also, and I think the key factor is [the] red pants. Now if somebody is wearing blue jeans and is described wearing blue jeans or dark shorts or something aspecific like that might not be sufficient. However, red pants is not your everyday attire. So the fact that the individual who exited the building where the individual with the red pants who [Gibson] was pursuing had entered was sufficient to cause [Gibson] to investigatively detain [defendant].

. . . I find that the initial investigative detention of [defendant] was lawful. Under the totality of the circumstances facing [Gibson] he could not simply let this individual walk away without

at least inquiring of him as part of the investigation of the shoplifting of whether or not he was the individual involved. There was not a sufficient description that could exclude him. There were certain indications that he could be included including the fact of the location, the red pants and . . . the information [Gibson] received from the [passerby] on the street.

Judge D'Arrigo next addressed whether or not there was sufficient cause to believe that defendant might be armed to conduct a Terry pat down. The judge found Gibson was familiar with defendant from the prior arrest in 2010 and knew therefrom that defendant had been in possession of a weapon. The judge also found Gibson arrested defendant after finding the crack pipe and did not complete the pat down. Rather, another officer completed the pat down after defendant's arrest and discovered the handgun on defendant's person. The judge concluded that Gibson's prior knowledge of defendant's possession of weapons justified a Terry pat down, and the search incident to defendant's arrest was supported by the requisite levels of either articulable suspicion or probable cause.

II.

On appeal, defendant reiterates that the police lacked a reasonable and articulable suspicion that he engaged in criminal activity, and lacked probable cause to seize and search him. We disagree.

Our Supreme Court has established the standard of review applicable to consideration of a trial judge's ruling on a motion to suppress:

Appellate review of a motion judge's factual findings in a suppression hearing is highly deferential. We are obliged to uphold the motion judge's factual findings so long as sufficient credible evidence in the record supports those findings. Those factual findings are entitled to deference because the motion judge, unlike an appellate court, has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy."

[State v. Gonzales, 227 N.J. 77, 101 (2016) (citations omitted).]

We will "reverse only when the trial court's determination is so clearly mistaken that the interests of justice demand intervention and correction." State v. Gamble, 218 N.J. 412, 425 (2014) (citation omitted). Applying these standards, we discern no reason to disturb Judge D'Arrigo's rulings.

"[A] police officer may conduct an investigatory stop of a person if that officer has 'particularized suspicion based upon an objective observation that the person stopped has been or is about to engage in criminal wrongdoing.'" State v. Coles, 218 N.J. 322, 343 (2014) (quoting State v. Davis, 104 N.J. 490, 504 (1986)). "The stop must be reasonable and justified by articulable facts; it may not be based on arbitrary police practices, the

officer's subjective good faith, or a mere hunch." Ibid. The standard for an investigatory stop "is less than the probable cause showing necessary to justify an arrest." State v. Shaw, 213 N.J. 398, 410 (2012).

During an investigatory stop, a police officer is permitted to conduct a pat down or frisk when the officer "has reason to believe that he is dealing with an armed and dangerous individual." State v. Robinson, 228 N.J. 529, 544 (2017) (citing Terry, 392 U.S. at 27). The court applies an objective test in deciding that issue, and must determine whether "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Terry, 392 U.S. at 27. The determination is fact sensitive and requires an evaluation of the "totality of the circumstances." State v. Pineiro, 181 N.J. 13, 22 (2004). "An officer's experience and knowledge are factors courts should consider in applying the totality of the circumstances test." Ibid. (citation omitted).

We have considered defendant's arguments in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons Judge D'Arrigo expressed in her comprehensive and cogent oral opinions. We are satisfied that under the totality of the

circumstances in both cases, the police had a reasonable and articulable suspicion to conduct an investigatory stop and pat down of defendant and probable cause to arrest and search him.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION