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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-3472-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KAMON J. GOSS,

Defendant-Appellant.

Submitted February 14, 2018 – Decided March 22, 2018

Before Judges Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
15-02-0180.

Joseph E. Krakora, Public Defender, attorney
for appellant (Stefan Van Jura, Deputy Public
Defender, of counsel and on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Sarah Lichter, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

Defendant Kamon J. Goss appeals from his March 10, 2017 conviction after pleading guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) following an unsuccessful motion to suppress evidence. He was sentenced to

five years in prison with a three and one-half year term of parole ineligibility.

On October 25, 2014, after 1:00 a.m., Detective Blair Astbury¹ of the New Jersey State Police received a phone call from a confidential informant (CI) about a black male in possession of a handgun wearing a black coat, an orange shirt, and a "wave cap" at a named bar in Trenton. Blair had found the CI "always reliable" on "probably more than a dozen" prior occasions.² Blair was off-duty but knew his cousin, Jason Astbury, a Trenton Police Officer, was working, so he called Jason to inform him of the tip.

Jason then relayed the information to the dispatcher. She broadcasted the information at 1:23 a.m. to Detective Noel Santiago, who was less than one minute away from the bar. Santiago regularly patrolled the area, had previously recovered firearms from individuals in the area, and testified it was particularly volatile at that time of the night when bars closed.

Santiago and his partner pulled up to the bar with the front of their unmarked police car facing the bar's door. Santiago noticed defendant, who matched the description given by the CI.

¹ We will call Detective Blair Astbury and his cousin, Trenton Police Officer Jason Astbury by their first names for clarity, intending no disrespect.

² After the testimonial portion of the motion, the court reviewed the confidential informant's files, which confirmed the past reliability of the informant.

As Santiago, who was dressed in his police tactical uniform, exited his vehicle, he shouted "Stop. Police." He approached defendant, noticed defendant had an abnormal bulge in the center of his waistband, and observed defendant turn around to enter the bar while looking back at Santiago. Santiago grabbed defendant's coat and, after a brief struggle, pulled defendant to the ground, at which point defendant moved his hand toward his waistband. Defendant was arrested and a handgun found in his waistband.

Defendant testified at the suppression hearing that he was at the bar that night wearing a pink and blue striped rugby shirt under his black coat, not an orange shirt. The court found Santiago's testimony credible, and found inconsistencies in defendant's testimony. The court concluded that based on the totality of the circumstances, Santiago had reasonable suspicion to stop defendant based on the CI's reliable tip coupled with the surrounding circumstances.

On appeal, defendant argues:

POINT I: THE HANDGUN FOUND ON DEFENDANT SHOULD BE SUPPRESSED BECAUSE THE MOTION COURT WAS INCORRECT IN FINDING A REASONABLE AND ARTICULABLE BASIS FOR SANTIAGO TO STOP DEFENDANT BASED ON A CONFIDENTIAL INFORMANT'S TIP WHICH WAS PREDICATED UPON AN UNKNOWN BASIS OF KNOWLEDGE AND COMMUNICATED THROUGH AT LEAST FOUR LEVELS OF HEARSAY.

We uphold the trial court's factual findings "so long as those findings are supported by sufficient credible evidence in

the record." State v. Hinton, 216 N.J. 211, 228 (2013) (quoting State v. Handy, 206 N.J. 39, 44 (2011)). We owe no deference, however, to the trial court's legal determinations, which we review de novo. State v. Coles, 218 N.J. 322, 342 (2014); State v. Buckley, 216 N.J. 249, 260-61 (2013).

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. "There is a constitutional preference for" law enforcement officers to obtain a warrant from a neutral magistrate before conducting a search or seizure. State v. Pineiro, 181 N.J. 13, 19 (2004). One of the exceptions to the warrant requirement is an investigatory stop, known as a Terry stop. See State v. Coles, 218 N.J. 322, 342 (2014).

Terry v. Ohio, 392 U.S. 1, 33 (1968), established that police can stop and question a suspect, without his consent, in the absence of probable cause for arrest. "A police officer may conduct an investigatory stop if, based on the totality of the circumstances, the officer had a reasonable and particularized suspicion to believe that an individual has just engaged in, or was about to engage in, criminal activity." State v. Stovall, 170 N.J. 346, 356 (2002).

Here, the tip was not anonymous. It was provided by a police informant who had been reliable many times in the past. The basis of the informant's knowledge that defendant was carrying a gun, however, was not known. "[T]he 'basis of knowledge' underlying an informant's tip can be established by direct evidence of the manner in which the informant learned of the criminal activity, by details that establish that the informant's knowledge has been derived from a trustworthy source, or by a prediction of hard-to-know future events." State v. Williams, 364 N.J. Super. 23, 34-35 (App. Div. 2003) (quoting State v. Smith, 155 N.J. 83, 94-95 (1998)).

Those factors are not present here. Although the informant was reliable in the past, the basis of his or her knowledge is not known. Even in a probable cause determination, however, the basis of knowledge may be compensated for by a strong showing of veracity. State v Zutic, 155 N.J. 103, 110-11 (1998). Here, the question is not whether the State demonstrated probable cause, but only reasonable suspicion to stop defendant.

The hearsay nature of the tip, having been transferred from the informant to Blair to Jason to the dispatcher to Santiago, is not overly concerning. When police convey information to each other it is presumed to be reliable. State v. Hathaway, 222 N.J. 453, 472 (2015).

In Santiago's testimony, he stated, "[A]s I approached him, I did observe an abnormal bulge under his shirt area." Defendant elevated suspicion by "blat[ing] his body" away, "target glancing back" at Santiago, and "appearing startled like he did not want to be there." After receiving a tip from a previously reliable confidential informant that a man loosely fitting defendant's description was at the bar with a gun, in a high-crime area in the early morning hour when the bars close, Santiago cried "Stop. Police." Santiago approached defendant and saw a bulge in his waistband. The bulge where a gun might well be carried added weight to the tip. Defendant turned away and tried to flee. The totality of the circumstances gave rise to a reasonable suspicion of defendant's possession of a gun, a dangerous situation that could imperil nearby citizens.

The police were justified in stopping defendant, grabbing him when he tried to run, and placing him under arrest after he reached for the area where the officer subsequently located the gun.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION