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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2632-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

RONELL J. ALMORALES,

Defendant-Respondent.

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Argued August 29, 2023 – Decided October 2, 2023

Before Judges Gilson and Gooden Brown.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 22-09-2521.

Kevin J. Hein, Assistant Prosecutor, argued the cause for appellant (Grace C. MacAulay, Camden County Prosecutor, attorney; Rachel M. Lamb, Assistant Prosecutor, of counsel and on the brief).

Douglas R. Helman, Assistant Deputy Public Defender, argued the cause for respondent (Joseph E. Krakora, Public Defender, attorney; Douglas R. Helman, of counsel and on the brief).

## PER CURIAM

By leave granted, the State appeals from a March 29, 2023, Law Division order granting defendant's motion to suppress evidence seized without a warrant. We affirm.

The facts are undisputed. On November 19, 2021, at about 8:50 a.m., Camden County Police Department Detective William Grasso "was conducting an undercover surveillance operation" on the 1300 block of Browning Street in Camden. The surveillance was initiated in response to Grasso's receipt of "specific information from a confidential source" who had "previously provided information to law enforcement" leading to "narcotics and weapons arrests." According to the source, "a heavy set [B]lack male wearing a large black jacket with fur on the hood was standing on the 1300 block of Browning Street and . . . had a handgun concealed on his person." Grasso also knew that "the 1300 block of Browning Street [was] an open air drug set where illegal narcotics [were] sold" and "violent crimes including shootings and homicides" occurred.

While "conducting . . . surveillance . . . of the area," Detective Fabbroni of the Narcotics Gang Unit (NGU) observed "a heavy set [B]lack male wearing a large black jacket with fur on the hood standing on the sidewalk on the 1300 block of Browning Street" with "several other unidentified males." The

individual, later identified as defendant, was "the only male observed wearing a black jacket with fur on the hood," and the other males were the only individuals observed on the 1300 block. Based on the tip, the time of day, the area's reputation, and defendant's heavy clothing, Grasso believed defendant was carrying a firearm. Consequently, Grasso notified NGU detectives of his observations and advised that defendant would be stopped.

Grasso proceeded to the 1300 block of Browning Street and exited his vehicle along with Fabbroni and Diaz, another NGU detective.<sup>1</sup> The detectives detained defendant, and conducted "a [Terry]<sup>2</sup> frisk . . . for weapons." "While checking the right front pocket of [defendant's] jacket," Diaz "felt an object consistent with . . . a handgun," and retrieved "a 9mm Black Taurus G2C" firearm containing a magazine with "nine ball point rounds of ammunition [and] . . . one ball point round in the chamber." During a search incident to arrest, the detectives found on defendant's person "sixty-three clear plastic vials" containing a "white powder suspected to be cocaine," as well as \$254 in U.S. currency.

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<sup>1</sup> The record does not reveal either detective's first name.

<sup>2</sup> Terry v. Ohio, 392 U.S. 1 (1968).

Defendant was subsequently charged in a five-count indictment with third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1) (count one); third-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(5) (count two); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1) (count three); second-degree possession of a weapon during a CDS offense, N.J.S.A. 2C:39-4.1(a) (count four); and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1) (count five).

On February 6, 2023, defendant moved to suppress the items seized, arguing that the informant's tip "was insufficient to establish the requisite veracity and basis of knowledge to support his detention and frisk." An evidentiary hearing was scheduled for March 15, 2023, at which time the State intended to present Grasso's testimony. Over defendant's objection, the State requested an adjournment the day before the hearing upon learning that Grasso had been injured in the line of duty and was unable to testify. The judge denied the State's adjournment request.

When the parties appeared on March 15, 2023, upon being advised that "defendant ha[d] no dispute with the facts as alleged in the State's brief," the judge proceeded to hear oral argument and adjudicate the motion as a non-

testimonial motion to suppress. Confirming that "by agreement" with defense counsel, "there [was] no factual dispute," the State lodged no objection to the judge proceeding in that fashion.

On March 29, 2023, the judge issued an order and accompanying written opinion granting the suppression motion. In the opinion, citing State v. Smart, 473 N.J. Super. 87 (App. Div. 2022), aff'd, 253 N.J. 156 (2023), the judge concluded the detectives "lacked reasonable suspicion to stop and frisk defendant because they did not sufficiently corroborate any criminal activity based on the confidential informant's tip." Critically, the judge noted "[d]efendant's body-type, clothing, and location were the only facts the police were able to corroborate." The judge pointed out that the detectives "did not observe any activity, like defendant adjusting his waist band; or any observable indicia, like a bulge in defendant's pocket; to raise a suspicion that defendant was concealing a handgun."

As such, the judge found that "[a]ll the police had to go on . . . was the bare report of an unnamed informant who neither explained how [he or she] knew about the gun nor supplied any basis for believing [he or she] had inside information about defendant." According to the judge, "[w]hen viewed in its totality, the information provided by the informant lacked the requisite detail to

establish a basis of knowledge to support the reliability of the tip and justify an investigative detention." Because the detectives had "insufficient evidence to support a finding of reasonable suspicion to warrant an investigatory detention," the judge concluded that "all the evidence seized from defendant's person [was] fruit of the poisonous tree and must be excluded."

In this ensuing appeal, the State raises the following points for our consideration:<sup>3</sup>

POINT I

THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE BECAUSE THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING A TIP FROM A RELIABLE CONFIDENTIAL INFORMANT, ESTABLISHED REASONABLE SUSPICION FOR A TERRY STOP AND FRISK.

POINT II

THE TRIAL COURT DENIED THE STATE'S RIGHT TO PRESENT MATERIAL FACTS BY FAILING TO POSTPONE THE SUPPRESSION HEARING AFTER THE POLICE OFFICER WITNESS WAS UNABLE TO TESTIFY.

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<sup>3</sup> We have omitted the first point addressing granting leave to appeal and renumbered the points accordingly.

"When reviewing a trial court's decision to grant or deny a suppression motion, appellate courts '[ordinarily] defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record.'" State v. Smart, 253 N.J. 156, 164 (2023) (alteration in original) (quoting State v. Dunbar, 229 N.J. 521, 538 (2017)). "But when the facts are undisputed, as they are here, and the judge interprets the law on a non-testimonial motion to suppress, our review is de novo." Ibid.

As a threshold matter, we reject the State's contention that the judge erred in adjudicating the motion "without live testimony," thereby denying "the State the ability to present all material facts." "[Rule] 3:5-7(c) provides that a hearing on a motion to suppress need be held only if material facts are disputed." State v. Kadonsky, 288 N.J. Super. 41, 45-46 (App. Div. 1996). "It is only when the defendant's counter statement [of facts] places material facts in dispute that an evidentiary hearing is required." State v. Green, 346 N.J. Super. 87, 90 (App. Div. 2001). Here, both parties agreed that the facts were undisputed. Moreover, the State did not object in the trial court to proceeding without a testimonial hearing and we reject its belated request for a remand to conduct a hearing.

Turning to the merits, "[a] warrantless search is presumed invalid unless it falls within one of the recognized exceptions to the warrant requirement."

State v. Gamble, 218 N.J. 412, 425 (2014) (quoting State v. Cooke, 163 N.J. 657, 664 (2000)). "[T]he State bears the burden of proving by a preponderance of the evidence that [the] warrantless search or seizure '[fell] within one of the . . . exceptions . . .'" State v. Goldsmith, 251 N.J. 384, 399 (2022) (second and third alteration in original) (quoting State v. Shaw, 213 N.J. 398, 409 (2012)).

Here, the exception at issue "is an investigative stop, also known as a Terry stop, which is a procedure that involves a relatively brief detention by police during which a person's movement is restricted." Ibid. An investigative stop or detention "is permissible 'if it is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" Shaw, 213 N.J. at 410 (quoting State v. Pineiro, 181 N.J. 13, 20 (2004)). "The standard for this form of brief stop or detention is less than the probable cause showing necessary to justify an arrest." Ibid. "However, an officer's hunch or subjective good faith—even if correct in the end—cannot justify an investigatory stop or detention." Id. at 411.

Pursuant to Terry and its progeny, in addition to an investigative stop, a police officer may conduct a protective search or pat-down without a warrant when the officer believes the individual detained is armed and dangerous. 392

U.S. at 27. This "exception allows a law enforcement officer 'to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.'" State v. Roach, 172 N.J. 19, 27 (2002) (quoting Terry, 392 U.S. at 23). "Specifically, the officer may conduct 'a carefully limited search of the outer clothing'" to determine whether weapons are present. Ibid. (quoting Terry, 392 U.S. at 30). Like an investigatory stop, "in order to conduct a protective search, an officer must have a 'specific and particularized basis for an objectively reasonable suspicion that defendant was armed and dangerous.'" Ibid. (italicization omitted) (quoting State v. Thomas, 110 N.J. 673, 683 (1988)).

"Determining whether reasonable and articulable suspicion exists for an investigatory stop is a highly fact-intensive inquiry that demands evaluation of 'the totality of circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions.'" Goldsmith, 251 N.J. at 399 (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)). The inquiry "takes into consideration numerous factors, including officer experience and knowledge." Id. at 400.

"With regard to presence in an area where criminal activity is prevalent, although the reputation of an area may be relevant to the analysis," our Supreme Court "has held that '[j]ust because a location to which police officers are dispatched is a high-crime area does not mean that the residents in that area have lesser constitutional protection from random stops.'" Ibid. (quoting State v. Chisum, 236 N.J. 530, 549 (2019)); see also Illinois v. Wardlow, 528 U.S. 119, 124 (2000) ("An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."); Pineiro, 181 N.J. at 31 (Albin, J., concurring) ("The words 'high crime area' should not be invoked talismanically by police officers to justify a Terry stop that would not pass constitutional muster in any other location."). Although "officers need not ignore the relevant characteristics of a neighborhood, . . . more is required to find reasonable suspicion." Goldsmith, 251 N.J. at 400-401 (citing Wardlow, 528 U.S. at 124).

When an informant's tip factors into the analysis,

[a]n informant's "veracity" and "basis of knowledge" are two highly relevant factors under the totality of the circumstances. A deficiency in one of those factors "may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." An informant's veracity may be established in a variety of ways. For example, the informant's past reliability will contribute

to the informant's veracity. With regard to the informant's basis of knowledge, if the informant does not identify the basis of knowledge, a reliable basis of knowledge may nonetheless be inferred from the level of detail and amount of hard-to-know information disclosed in the tip. Finally, independent corroboration of hard-to-know details in the informant's tip may also greatly bolster the tip's reliability.

[State v. Zutic, 155 N.J. 103, 110-11 (1998) (citation omitted) (first quoting State v. Smith, 155 N.J. 83, 93 (1998); then quoting Illinois v. Gates, 462 U.S. 213, 233 (1983); then citing State v. Novembrino, 105 N.J. 95, 123 (1987); and then citing Smith, 155 N.J. at 95).]

Even where the veracity factor is satisfied "by demonstrating that the informant has proven reliable in the past, such as providing dependable information in previous police investigations," the State must still demonstrate that the "informant obtained his [or her] information in a reliable manner." State v. Keyes, 184 N.J. 541, 555 (2005). For example, information may be "deemed to have come from a trustworthy source if the informant provides 'sufficient detail in the tip or recount[s] information that could not otherwise be attributed to circulating rumors or easily gleaned by a casual observer.'" Id. at 556 (quoting Smith, 155 N.J. at 95).

Applying these principles, we are satisfied that the judge correctly concluded the detectives lacked a reasonable articulable suspicion that defendant was engaged in criminal activity to justify the stop and, in turn, the

frisk. Grasso believed defendant was armed based on the tip, the time of day, the prevalence of crime in the area, and defendant's heavy clothing. The time of day and prevalence of crime in the area are "non-specific, non-individualized" reasons for conducting an investigatory stop of defendant. Goldsmith, 251 N.J. at 405. Because neither reason is specific to defendant engaging in behavior indicative of criminal activity, it "could be used to justify the stop of virtually anyone" at that time of day "based simply on their presence on that street." Id. at 406. We acknowledge that Grasso's awareness of the prevalence of crime in the area is a relevant factor, but it was insufficient under the circumstances to form a reasonable and articulable suspicion of criminality—even considering the other factors.

Turning to the tip and defendant's clothing, as the judge pointed out, the fact that the tip accurately described defendant's clothing and location "is of no moment because a tipster's knowledge of such innocent identifying details alone 'does not show that the tipster has knowledge of concealed criminal activity.'" State v. Rosario, 229 N.J. 263, 276 (2017) (quoting Florida v. J.L., 529 U.S. 266, 272 (2000)). Although the tip satisfied the veracity factor because the informant had proven reliable in the past, the information provided in the tip "was not information the informant could claim to know only if he or she had a

reliable source of information" to satisfy the basis of knowledge factor. Smith, 155 N.J. at 97. "Without knowing the facts that led the informant to believe defendant was engaged in illegal activity, we cannot make an independent determination of whether that conclusion was reasonable." Id. at 98.

Further, there were no police observations of defendant engaging in behavior indicative of criminal activity or awareness of defendant engaging in criminal activity in the past to corroborate the tip and cure its deficiencies. Although the detectives corroborated defendant's body-type, clothing, and location, those facts, combined with the others, were still insufficient to establish an objectively reasonable suspicion that defendant was armed and dangerous. See Thomas, 110 N.J. at 683 (concluding officer was justified in making an investigatory stop based on a tip that "included a detailed description of the appearance, name, and location of a person allegedly in possession of illegal drugs," which facts were corroborated by the officer observing the defendant at the location and matching the description as well as the officer's recognition of the defendant "from a prior arrest for drug possession").

In sum, we are convinced the State failed to "'meet the constitutional threshold of individualized reasonable suspicion' that this particular defendant was engaged in criminal activity." Goldsmith, 251 N.J. at 405 (quoting State v.

Nyema, 249 N.J. 509, 532 (2022)). "An investigative detention that is premised on less than reasonable and articulable suspicion is an 'unlawful seizure,' and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." State v. Elders, 192 N.J. 224, 247 (2007) (quoting State v. Rodriguez, 172 N.J. 117, 132-33 (2002)). Therefore, we discern no error in the judge's decision granting defendant's motion to suppress.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION