SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1587-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAHEEM T. MILLER, a/k/a
RAHEEM MILLER,

Defendant-Appellant.

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Argued April 17, 2024 – Decided May 28, 2024

Before Judges Firko and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 21-08-2318.

Peter Thomas Blum, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Peter Thomas Blum, of counsel and on the brief).

Jason Magid, Assistant Prosecutor, argued the cause for respondent (Grace C. MacAulay, Camden County Prosecutor, attorney; Jason Magid, of counsel and on the brief).

PER CURIAM

Defendant Raheem T. Miller appeals his guilty plea conviction for possession of a firearm by a previously convicted person, N.J.S.A. 2C:39-7(b)(1). Specifically, he challenges an August 2, 2022 Law Division order denying his motion to suppress the handgun he attempted to discard while grappling with a detective during a stop and frisk. The trial court ruled the investigative detention was not predicated upon reasonable articulable suspicion and thus was unlawful. However, the trial court also ruled that under the attenuation exception to the exclusionary rule, by removing the gun from a concealed fanny pack and throwing it to the ground during the physical struggle, defendant's resistance broke the chain of causation between the unlawful stop and the discovery and seizure of the weapon. We affirm.

I.

We discern the pertinent facts and procedural history from the record. A detective for the Narcotics Gang Unit of the Camden County Police Department was the State's sole witness at the suppression hearing. His partner was called to testify by the defense. Footage from both officers' body worn cameras (BWCs) was admitted. The following evidence was presented at that hearing.

On May 31, 2021, streets were closed off in the Centerville neighborhood of Camden for a block party. Police obtained information through social media that a male juvenile, T.G., would be bringing a gun to Centerville.

The detective—who was familiar with T.G. from prior encounters—was conducting surveillance in an unmarked police vehicle around the 1200 block of Chase Street. At about 5:00 p.m., the detective spotted T.G. walking with other males, who ranged from fifteen to seventeen years old. At this point, T.G. was about a five-to-ten-minute walk from Centerville.

The detective testified the four males were "walking around aimlessly." He observed them enter a residence on Chase Street where they remained inside for approximately fifteen minutes. When they exited the residence, they traveled down Louis Street until they reached the 1100 block of Lansdowne Avenue, where they entered a second residence. When they exited the Lansdowne residence, the detective noticed they all were wearing different clothing. They were now wearing long pants and sweatshirts. The group then traveled toward the Centerville neighborhood.

The detective radioed other officers to stop T.G. and the other three juvenile males. The detective was not present for the stop because he was delayed in traffic due to the block party. T.G. and another juvenile complied

when officers ordered them to stop on Sheridan Street. The other two males ran from the scene, heading south on Sheridan Street, which runs parallel to Carl Miller Boulevard. About a minute or two after receiving the radio communication, the detective exited his car around the 900 block of Carl Miller Boulevard. The detective was not in uniform but was wearing a utility vest marked "Camden County Police Department."

The detective observed a male wearing a gray sweatsuit—defendant—walking out of an alleyway from Sheridan Street located about 100 feet from where the attempted stop of the four juveniles occurred. Defendant had the hood of his sweatshirt over his head and his hands in his pockets. The detective believed that was incompatible with the warm weather.

Defendant walked directly towards the detective. The detective radioed his supervisor "to get a better description of the males that ran"—in case defendant had also run during the earlier stop. There was no indication he tried to avoid the detective. As defendant drew close, the detective asked, "[y]ou all right, buddy? You all right?" At that point, the detective grabbed defendant's arm with one hand and put his other hand on defendant's chest. The detective told defendant, "[y]our heart's pounding, bro." The detective noticed a "large

bulge" under defendant's sweatsuit. While holding defendant's arm, the detective ordered, "[h]old on. Don't move."

After making a brief radio transmission to his supervisor, the detective told defendant to "put your hands behind your back." The detective acknowledged at the hearing that defendant, who was twenty-eight years old, was not one of the three juveniles he had observed walking with T.G. The detective explained:

> At this point the bulge, he had a large bulge. He had the sweatsuit, which really didn't correspond with the weather. And at that point I was unable to confirm who exactly ran from the area, so at that point I believed he was possibly armed and dangerous and involved.

The detective attempted to secure defendant by putting his hands behind his back. Defendant did not comply and attempted to pull away from the detective's grasp. While the detective held defendant's sleeve, defendant took his sweatshirt off. The detective stated, "[b]ro, stop moving." As defendant's sweatshirt was coming off, the "bulge" was revealed to be a fanny pack. About six seconds after defendant first tried to pull away, the detective pulled defendant close and held him from behind in a bear hug. Defendant continued to struggle. They remained in that position for about fourteen seconds.

The detective testified that while he was holding defendant, defendant reached into the fanny pack, removed a gun, and tossed it onto the sidewalk. Defendant asked passers-by to take the gun, but they ignored him. Other officers arrived and helped subdue defendant. Police recovered the gun lying on the sidewalk.

As the encounter with defendant was transpiring, the detective's partner was searching for the two juveniles who fled from the attempted stop. His partner's BWC recording shows that as he was searching for the two juveniles, he received a radio transmission about "an older dude" who had "tossed a gun." At the hearing, the detective's partner acknowledged defendant was not one of the four youths.

In August 2021, defendant was charged by indictment with: (1) second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); (2) fourth-degree possession of a defaced handgun, N.J.S.A. 2C:39-3(d); (3) third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3); and (4) second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1).

The evidential suppression hearing was convened on June 15, 2022. On August 2, 2022, the trial court denied defendant's motion to suppress in an oral decision. The trial court concluded the detective did not have reasonable

suspicion to stop defendant, noting "an anonymous tip alone is not enough to support a stop because the level of reliability is unchecked and low." The trial court stressed, moreover, that defendant "was not the subject of the tip, nor part of the group of males with whom the suspect had been with, a fact known by the detective." The trial court noted "the only facts that the officer witnessed is that the [d]efendant was wearing clothing similar to the others that was too heavy for the weather, a fact not apparent to the [c]ourt from the video."

Although he found the stop and frisk of defendant was unlawful, the trial court nonetheless denied defendant's motion to suppress the gun because defendant's obstruction attenuated the initial illegality and provided a basis to arrest defendant and seize the gun that was discarded during the struggle. The trial court applied the three-factor attenuation test set forth in State v. Williams, 192 N.J. 1 (2007).[1]

As to the first factor, the trial court held the short timeframe of the encounter weighed in favor of suppression, finding "[h]ere, there was no material time, as shown on the video. At most seconds between the beginning

[1] As we explain in Section II, our Supreme Court in Williams reiterated the three factors that comprise the attenuation exception, which are: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Id. at 15.

of the illegal seizure of the [d]efendant and the ultimate seizure of the challenged evidence." As to the second attenuation factor, the trial court found defendant's obstruction was "an intervening circumstance, as reflected on the video." As to the third factor, "[t]here is nothing to show the police did not act in good faith." The trial court concluded, "the second and third prong of the factors outweigh the first. Defendant's resistance and efforts to dispose of the gun turns what would otherwise have been an unconstitutional violation into a legal search." In reaching that fact-sensitive conclusion, the trial court stressed that defendant actively resisted the stop prior to him throwing the gun away, finding "[t]his resistance is clearly shown on the video and started before he threw the gun away." The court determined [d]efendant's conduct at that moment makes the gun admissible.

On September 22, 2022, defendant pled guilty pursuant to a plea agreement to second-degree possession of a firearm by a previously convicted person. The State agreed to dismiss the remaining charges and to cap the overall sentence at five years—the bottom of the second-degree range. On January 20, 2023, the trial court sentenced defendant in accordance with the plea agreement to a five-year prison term with a mandatory five-year period of parole ineligibility.

This appeal follows. Defendant raises the following contention for our consideration.

> I. THE HEARING COURT INCORRECTLY DENIED THE MOTION TO SUPPRESS A GUN REVEALED SECONDS AFTER AN ILLEGAL STOP. U.S. CONST. AMENDS. IV, XIV; N.J. CONST. ART. 1, ¶ 7.
>
> > A. The Hearing Court Correctly Decided That The Detective Illegally Stopped [Defendant] Based On An Anonymous, Unexplained, And Uncorroborated Tip That Someone Else—Not [Defendant]—Would Have a Gun.
> >
> > B. The Hearing Court Was Mistaken In Refusing To Suppress Because The Illegal Stop Was A Proximate Cause Of The Discovery Of The Gun Seconds Later, And Nothing In The Interval Attenuated The Illegality.

II.

We begin our analysis by acknowledging the legal principles that govern this appeal. Our review of a decision on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021). "Generally, on appellate review, a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when '"those findings are supported by sufficient credible evidence in the record."'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). We defer to those factual findings because

of the trial court's "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 243 (2007) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Accordingly, we "ordinarily will not disturb the trial court's factual findings unless they are 'so clearly mistaken "that the interests of justice demand intervention and correction."'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)).

In contrast, our review of legal conclusions drawn from those facts is de novo. State v. Radel, 249 N.J. 469, 493 (2022); see also Gamble, 218 N.J. at 425 ("A trial court's interpretation of the law . . . and the consequences that flow from established facts are not entitled to any special deference"). We regard the determination of whether an exception to the exclusionary rule applies, such as the attenuation exception, to be a legal conclusion to which we owe no special deference. While we defer to the trial court's factual findings with regard to the three prongs of the attenuation exception, we review the determination of whether the State has established a factor—and whether in total they justify invocation of the exception—with a fresh set of eyes.

"Under both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution, 'searches and seizures

conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid.'" Goldsmith, 251 N.J. at 398 (quoting Elders, 192 N.J. at 246). The State must prove by a preponderance of the evidence that the warrantless search or seizure is lawful. State v. Shaw, 213 N.J. 398, 409 (2012) (quoting State v. Edmonds, 211 N.J. 117, 128 (2012)).

A Terry[2] stop is one exception to the warrant requirement as it "involves a relatively brief detention by police during which a person's movement is restricted." Goldsmith, 251 N.J. at 399. Such an investigatory stop may be made without a warrant, or probable cause, "'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.'" Ibid. (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)).

In determining whether an investigative detention is justified under the reasonable suspicion standard, "a court must consider 'the totality of the circumstances—the whole picture.'" State v. Stovall, 170 N.J. 346, 361 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). Furthermore, reasonable suspicion "requires 'some minimal level of objective justification for making the stop.'" State v. Amelio, 197 N.J. 207, 211-12 (2008) (quoting State

[2] Terry v. Ohio, 392 U.S. 1 (1968).

v. Nishina, 175 N.J. 502, 511 (2003); see also State v. Scriven, 226 N.J. 20, 34 (2016) ("[R]aw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop."). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion required is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." Gamble, 218 N.J. at 428 (citation omitted). However, merely being in the area of reported or suspected criminal activity is not sufficient grounds for an investigatory detention. See Goldsmith, 251 N.J. at 403 n.6.

As a general matter, it is long established under both the Fourth Amendment and Article I, paragraph 7 of the New Jersey Constitution that the exclusionary rule bars the State from admitting evidence obtained from an unconstitutional search or seizure. Wong Sun v. United States, 371 U.S. 471, 485-88 (1963); Shaw, 213 N.J. at 412-13. However, the "fruit of the poisonous tree" doctrine recognized in Wong Sun does not automatically mandate the suppression of all evidence found subsequent to an unlawful search or seizure. 371 U.S. at 487-88.

As the New Jersey Supreme Court explained in State v. Smith, "[t]he exclusionary rule is not monolithic and inexorable." 212 N.J. 365, 389 (2012).

Rather, "[c]ase law has developed certain exceptions to the exclusionary rule, in recognition of the fact that if exclusion in a particular instance will not further purposes of the exclusionary rule, there is no reason for the courts to apply it." Ibid. (citing Nix v. Williams, 467 U.S. 431, 443 (1984)).

Stated another way, and importantly for purposes of this appeal, suppression of otherwise relevant and admissible evidence does not turn on whether the illegal search or seizure was a "but for" cause of the State obtaining the evidence a defendant seeks to suppress. Shaw, 213 N.J. at 413. Rather, courts hearing suppression motions must determine whether the evidence "was a product of the 'exploitation of [the primary] illegality'—the wrongful detention—or of 'means sufficiently distinguishable to be purged of the primary taint.'" Ibid. (quoting Wong Sun, 371 U.S. at 488).

As we recently noted in State v. Scott:

> By our reckoning, putting aside the "good faith exception" rejected by our Supreme Court in State v. Novembrino, 105 N.J. 95, 158 (1987), there are four recognized exceptions to the exclusionary rule: inevitable discovery, see Nix, 467 U.S. [at] 431; independent source, see Segura v. United States, 468 U.S. 796, (1984); attenuation of taint, see Brown v. Illinois, 422 U.S. 590 (1975); and impeachment, see United States v. Havens, 446 U.S. 620 (1980).
>
> [474 N.J. Super. 388, 412 n.5 (App. Div. 2023).]

We focus in this case on the attenuation exception. Our Supreme Court has held that evidence will not be suppressed "when the connection between the unconstitutional police action and the evidence becomes '"so attenuated as to dissipate the taint"'" from an unlawful investigatory stop. State v. Badessa, 185 N.J. 303, 311 (2005) (quoting Murray v. United States, 487 U.S. 533, 536-37 (1988)). This exception to the general rule of exclusion is based on important policy considerations. In Williams, our Supreme Court explained,

> the law should deter and give no incentive to suspects who would endanger the police and themselves by not submitting to official authority. As we stated in [State v. Crawley], "[a] person has no constitutional right to use an improper stop as justification to commit the new and distinct offense of resisting arrest, eluding, escape, or obstruction, thus precipitating a dangerous chase that could have deadly consequences." 187 N.J. [440,] 459 [(2006)]. Had defendant merely stood his ground and resorted to the court for his constitutional remedy, then the unlawful stop would have led to the suppression of the handgun. [See id. at 460.]
>
> Our approach balances both the right of the people to be free from unreasonable searches and seizures and their right to be free from the dangers created by suspects who physically resist the police, and provides sufficient disincentives to deter both police misconduct and criminal misconduct by suspects. The exclusionary rule will continue as a deterrent to law enforcement officers who violate the Fourth Amendment and Article 1, Paragraph 7. Based on our ruling, it would be farfetched to believe that police officers will attempt suspicionless investigatory stops or pat downs—to

> which the exclusionary rule applies—in the hope that a suspect will commit an independent crime that will be the basis for a lawful search.
>
> [192 N.J. at 17.]

As we have already noted, the Williams Court recognized three factors to consider in determining whether seized evidence has been "sufficiently attenuated from the taint of a constitutional violation": "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Id. at 15 (quoting State v. Johnson, 118 N.J. 639, 653 (1990)).

The first factor, temporal proximity, "'is the least determinative' factor." Id. at 15-16 (quoting State v. Worlock, 117 N.J. 596, 622-23 (1990)); see also State v. Alessi, 240 N.J. 501, 525 (2020) ("Because the length of time between the initial stop and the subsequent statement can lead to ambiguity, it is the least important factor.") (citing Shaw, 237 N.J. at 614-15).

"'The second factor, intervening events, "can be the most important factor in determining whether [evidence] is tainted."'" Williams, 192 N.J. at 16 (alteration in original) (quoting Worlock, 117 N.J. at 623). As explained in Alessi, "[i]n response to an unconstitutional stop, 'the State should show some

"demonstrably effective break in the chain of events.'" 240 N.J. at 525 (quoting Worlock, 117 N.J. at 623-24).

Lastly, the third factor "is 'particularly' relevant." Worlock, 117 N.J. at 624. In Alessi, the Court explained, "we may favor exclusion in spite of intervening circumstances where police conduct was 'calculated to cause surprise, fright, and confusion.'" 240 N.J. at 525 (quoting Brown, 422 U.S. at 605). "However, where the police acted in good faith or their 'conduct was more casual than calculating,' this factor weighs in favor of admission." Ibid. (quoting Worlock, 117 N.J. at 624).

In Williams, the Court concluded the "[d]efendant's resistance to the pat down and flight from the police . . . was an intervening act—the crime of obstruction—that completely purged the taint from the unconstitutional investigatory stop." 192 N.J. at 18 (emphasis added).

III.

Applying these principles to the matter before us, we agree with the trial court the investigative detention was unsupported by reasonable suspicion and thus was unlawful. The information learned on social media about T.G. was tantamount to an anonymous tip and afforded no lawful basis to stop him or persons walking with him, even considering the detective had prior dealings

with T.G. See State v. Rosario, 229 N.J. 263, 276 (2017) (standing alone, an anonymous tip "inherently lacks the reliability necessary to support reasonable suspicion."). And even assuming for the sake of argument that the flight from the attempted stop by two male juveniles provided reasonable suspicion to stop them, cf. State v. Tucker, 136 N.J. 158, 173 (1994), the detective had no objectively reasonable basis to believe that defendant was associated with the fleeing juveniles. The detective observed the four juveniles—indeed directed other officers to stop them—but did not observe defendant with them. Nor was it objectively suspicious that defendant happened to be walking—not running—from the same area where the police attempted to stop the two fleeing youths.

Furthermore, the trial court did not find that defendant was acting nervously before the encounter. Defendant was walking, not running, and was heading toward the detective, which hardly evinces evasion. We also agree with the trial court that "the only facts that the officer witnessed is that . . . [d]efendant was wearing clothing similar to the others that was too heavy for the weather, a fact not apparent to the [c]ourt from the video."

In State v. Atwood, our Supreme Court noted, "whereas 'a mere "hunch" does not create reasonable suspicion, the level of suspicion required is "considerably less than proof of wrongdoing by a preponderance of the

evidence," and "obviously less" than is necessary for probable cause.'" 232 N.J. 433, 448 (2018) (quoting Gamble, 218 N.J. at 428). The Court added, however, "[a]lthough the bar is low, it is a bar nonetheless, and the State must provide evidence to support the reasonableness of the suspicion that led to the stop that can be tested through the adversarial process." Ibid.

Applying that standard, we are satisfied that the stop in this case was based on little more than a hunch and not an objectively reasonable suspicion to believe defendant was associated with T.G. or otherwise involved in criminal activity. We therefore conclude the trial court correctly held the stop was unlawful.

IV.

We turn next to whether the attenuation exception applies, considering the three factors. As to the first factor, the BWC recording confirms there was no material time—"[a]t most seconds between the beginning of the illegal seizure of the [d]efendant and the ultimate seizure of the challenged evidence." We agree with the trial court this factor militates in favor of suppressing the evidence, although we reiterate this is the least important factor. Alessi, 240 N.J. at 525.

Turning to the second factor, we agree with the trial court's ruling that defendant's resistance constitutes an intervening circumstance. We are unpersuaded by defendant's argument his obstructive reaction upon being stopped was not "serious" or "unexpected[]" enough to justify invocation of the attenuation exception. Defendant's actions were analogous to, if not more serious than, the obstructive conduct in Williams, where the "defendant physically resisted the pat down by pushing [the police officer] aside and taking flight, thereby endangering the police, himself, and the public." 192 N.J. at 10.

Here, defendant jerked away from the detective after being instructed to put his hands behind his back and made a shoving motion toward the detective in the process. The shoving motion seems to have been an attempt to flee rather than to assault the officer. But as the Court made clear in Williams, flight from an unlawful stop can constitute an intervening circumstance sufficient to break the chain of causation between the constitutional violation and the recovery of evidence discarded during the flight. Id. at 16.

The present facts, moreover, are distinguishable from cases cited by defendant where evidence discarded during flight was suppressed after an illegal seizure. See e.g., Shaw, 213 N.J. at 421-22 (suppressing two bricks of heroin possessed by a defendant who was unlawfully stopped for an arrest warrant

check); State v. Casimono, 250 N.J. Super. 173, 186-88 (App. Div. 1991) (holding that a dollar bill containing cocaine residue the driver threw over a guardrail while resisting an unlawful pat down search should have been suppressed). Notably, those cases did not involve a firearm that posed an immediate danger to police, defendant, and others in the area. We emphasize defendant's obstructive conduct was inherently more dangerous than trying to break free from an officer's grasp. During the struggle, defendant managed to access a concealed firearm, threw it to the ground, and asked passersby to take custody of it. That conduct posed an extreme risk, constituting a serious intervening circumstance that weighs heavily in our attenuation exception analysis. See Williams, 192 N.J. at 16 (noting intervening circumstance is the most important attenuation factor).

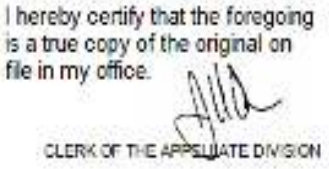
As to the third prong, the trial court concluded "[t]here is nothing to show the police did not act in good faith." In terms of the flagrancy and purpose of the police misconduct, Williams, 192 N.J. at 15-16, we note no allegation is made that police in this case relied on an impermissible consideration, such as race or ethnicity, in drawing an inference of criminality. Cf. Scott, 474 N.J. Super. at 408. Furthermore, the detective's reliance on defendant's cold-weather clothing and the fact that defendant was wearing the hood despite the warm

weather was done in good faith, even though that circumstance was insufficient to establish reasonable suspicion of criminal activity.

We nonetheless note the detective appears to have improperly initiated the stop by grasping defendant without warning. The detective had no authority to begin his investigation by placing his hand on defendant's chest to feel his heart beating, rather than by asking defendant whether he had been running. Because the State bears the burden of establishing the attenuation exception factors, we deem the manner in which the detective initiated the stop to be "calculated to cause surprise, fright, and confusion." See Alessi, 240 N.J. at 525.

But even accepting for the sake of argument the detective's Fourth Amendment violation was flagrant, militating in favor of suppression, we are convinced the intervening act under the second prong was so alarming as to justify invocation of the attenuation exception. See Williams, 192 N.J. at 18 (noting the obstruction "completely purge[] the taint from the unconstitutional investigatory stop."). Clearly, reaching for and handling a concealed handgun while grappling with an officer—even if only to discard it rather than fire it — cannot be tolerated and must be deterred. See Williams, 192 N.J. at 17 ("[T]he law should deter and give no incentive to suspects who would endanger the police and themselves by not submitting to official authority.").

Affirmed.


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