

**NOT FOR PUBLICATION WITHOUT THE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-0590-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DAMON GARY,

Defendant-Respondent.

Submitted May 2, 2023 – Decided June 9, 2023

Before Judges Geiger and Susswein.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 22-02-0470.

Grace C. MacAulay, Camden County Prosecutor, attorney for appellant (Kevin J. Hein, Assistant Prosecutor, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

By leave granted, the State appeals from a Law Division order granting defendant's motion to suppress a handgun recovered during a stop and frisk. The State contends the motion court did not consider all of the relevant facts and reasonable inferences when it concluded that the State failed to prove there was reasonable and articulable suspicion to justify the investigative detention.¹ After carefully reviewing the record in light of the governing legal principles, we reverse the order suppressing the fruits of the stop and frisk.

I.

We discern the following facts from the suppression hearing conducted on August 25, 2022. Camden County Police Department (CCPD) Officer Dott was the sole witness to testify. The State also introduced the audio-video recording made by Officer Dott's body worn camera (BWC).

At approximately 2:30 p.m. on February 16, 2021, police received a 911 call reporting that a named individual—defendant—was in possession of a firearm. The caller, who identified herself by name,² reported that defendant

¹ Defendant did not submit a responding brief.

² The State's brief asserts that the 911 caller was defendant's girlfriend. The record reflects the State did not present that fact at the suppression hearing.

was standing outside a residence on Chestnut Street in Camden and was wearing a brown leather jacket, camouflage cargo pants, and black Timberland boots.

Officer Dott was on patrol and responded to a police dispatch, as did Officer Tran and at least three other officers. The responding officers arrived at the scene in separate vehicles. The CCPD "watch commander" was in the "Realtime Tactical Information Center" monitoring defendant live via the city-wide camera system. The watch commander directed the responding officers to defendant's exact location. The watch commander alerted the responding officers there was a bulge in defendant's pocket.

The officers converged on defendant from different directions. Officer Tran arrived at the scene moments before Officer Dott.³ Officer Dott saw a bulge in defendant's pocket, corroborating the information supplied by the 911 caller and the observation made by the watch commander. While approaching defendant, one of the other responding officers shouted, "Hands up! On top of your head!" That oral command is captured on Officer Dott's BWC recording.

³ The State argues the BWC recording shows that the command "put your hands up" occurred eight seconds before Officer Dott reached defendant's position.

Officer Tran initiated a pat down of the defendant's right pant leg. Officer Dott joined in the execution of the frisk and recovered the firearm and magazine. A further pat-down of the defendant's left pant leg revealed a second magazine.

On September 13, 2022, the motion judge granted defendant's motion to suppress the handgun, issuing a short oral decision. The judge found Officer Dott's testimony to be credible and noted the BWC video was consistent with the officer's testimony. The judge concluded; however, Officer Dott did not participate in initiating the investigative detention because that occurred before he arrived. The judge found, "when [Officer Dott] arrived at the scene another officer, Officer Tran, was already giving verbal orders to the person later identified as the defendant, specifically . . . [to] show his hands." The judge added, "when Officer Dott came onto the scene . . . Officer Tran and another officer were already there."

The judge emphasized that the State did not present testimony from the officer who first commanded defendant to stop. The judge concluded:

What the State has not provided is any evidence about the facts that the officer or officers, either Officer Tran or the other who was with Officer Tran who actually effectuated the stop of the defendant -- what information they had at their "command," to use the word from the Dunbar^[4] case.

⁴ State v. Dunbar, 434 N.J. Super. 522 (App. Div. 2014).

There was no information presented about the facts that those two officers, or one of the two of them, had to justify their command to the defendant to show his hands, to stop the defendant.

Officer Dott did not initiate the stop, other officers did.

There was no evidence presented about the basis that those officers used to conclude that the stop was appropriate, or in other words that there was a reasonable suspicion to initiate the stop.

For those reasons, the judge concluded the State had not met its burden to establish the stop was lawful. We granted the State's motion for leave to appeal the order suppressing the handgun.

II.

The standard of our review of a motion to suppress is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). "[A]n 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. Ahmad, 246 N.J. 592, 609 (2021) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). We "defer[] to those findings in recognition 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.'" Nyema, 249 N.J. at 526 (quoting Elders, 192 N.J. at 244). Importantly, "[a] trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Id. at 526–27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Turning to substantive legal principles, "[b]oth the United States and the New Jersey Constitutions protect citizens against unreasonable searches and seizures." State v. Mann, 203 N.J. 328, 337 (2010) (quoting State v. Amelio, 197 N.J. 207, 211 (2008)). In the landmark case of Terry v. Ohio, the United States Supreme Court established the now-familiar principle that police may not order a person to stop absent reasonable and articulable suspicion to believe that criminal activity is afoot. 392 U.S. 1, 27 (1968). In State v. Goldsmith, our Supreme Court reaffirmed that an investigative detention is permitted only "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." 251 N.J. 384, 399 (2022) (internal quotation marks omitted) (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)).

The reasonable suspicion standard is less demanding than probable cause. Ibid.; see also State v. Thomas, 110 N.J. 673, 678 (1988) (noting reasonable suspicion needed to make a stop is "something less than probable cause needed

to support an arrest"). Determining whether reasonable and articulable suspicion exists is a "highly fact-sensitive inquiry" that demands evaluation of "the totality of the circumstances surrounding the police-citizen encounter." Goldsmith, 251 N.J. at 399 (quoting State v. Privott, 203 N.J. 16, 25–26 (2010)).

This case does not involve information about a man with a gun provided by an anonymous tipster. Cf. Florida v. J.L., 529 U.S. 266, 270 (2000) (noting there is no general exception to the "indicia of reliability" requirement for anonymous tips). The rule is very different when, as in this case, the information is provided to police by a citizen who identifies herself and whose information is based on direct personal observation. See State v. Stovall, 170 N.J. 346, 362 (2002) ("When an informant is an ordinary citizen, New Jersey courts assume that the informant has sufficient veracity and require no further demonstration of reliability."); State v. Basil, 202 N.J. 570, 586 (2010) ("[A]n objectively reasonable police officer may assume that an ordinary citizen reporting a crime, which the citizen purports to have observed, is providing reliable information.").

Furthermore, in State v. Crawley, our Supreme Court recognized, "[i]t is understood 'that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to

cross-examine their fellow officers about the foundation for the transmitted information." 187 N.J. 440, 457 (2006) (quoting United States v. Robinson, 536 F.2d 1298, 1299 (9th Cir. 1976)).

Applying these principles to the facts adduced by the State at the suppression hearing, we conclude the investigative detention was lawfully initiated based on reasonable suspicion to believe defendant was carrying a handgun. The 911 call included detailed information. Importantly, the caller identified herself and thus could be held accountable for providing false information. See Amelio, 197 N.J. at 214. The officers responding to the dispatch corroborated the information she provided before the stop was initiated. Importantly, the watch commander, viewing the episode unfold on closed-circuit video, confirmed the bulge in defendant's pocket and relayed his observation to the responding officers. The watch commander, moreover, was coordinating the response by all of the officers.

Although Officer Dott may not have been the one to issue the "hands up" command, he clearly was part of the joint convergence of officers responding to the dispatch. We emphasize that Officer Dott was close enough to defendant at the moment the investigative detention was initiated to record the other officer's oral command to defendant. And we reiterate that all of the responding officers

were being advised and coordinated by the watch commander, who was watching remotely and communicating directly with the officers.

Although we are hesitant to second-guess a motion court's fact-sensitive findings, it appears the judge did not address all of the facts adduced by the State at the suppression hearing that constitute the totality of the circumstances. Notably, the motion judge's oral opinion does not address the role played by the watch commander. Nor did the motion judge acknowledge that Officer Dott was close enough to defendant at the moment the stop was initiated that his BWC recorded the other officer's command to defendant to put up his hands.

In these circumstances, there was no basis upon which the motion judge might assume the non-testifying officers were not aware of the same information as Officer Dott. All of the officers were responding to the same dispatch and were being directed in real time by the watch commander. We are satisfied that multiple officers, including Officer Dott, participated in the stop and that each possessed sufficient awareness of facts to satisfy the reasonable articulable suspicion threshold. We therefore conclude the stop and ensuing frisk were supported by reasonable and articulable suspicion to believe defendant was unlawfully carrying a handgun.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION