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September 27, 2021

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

Re: A-77-20, *State v. Nazier D. Goldsmith* (085636),
Appellate Division Docket No. A-0652-20

Honorable Chief Justice and Associate Justices:

Pursuant to *Rule* 2:6-2(b), kindly accept this letter brief on behalf of *Amicus Curiae* American Civil Liberties Union of New Jersey.

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Preliminary Statement

Based on their hunch that Nazier Goldsmith might engage in a drug transaction while walking down an alley in a high crime neighborhood in Camden, police officers stopped, seized, and frisked him. The New Jersey Constitution demands more. (Point I).

Police seized Mr. Goldsmith by blocking his way and peppering him with questions. No reasonable person would think they were free to leave at that point. (Point I, A). Any doubt that Mr. Goldsmith had been seized would have been completely erased, however, when officers demanded identification – and forbade Mr. Goldsmith from retrieving it himself. (Point I, B). Regardless of when, exactly, the seizure took place, police never obtained the required level of suspicion to justify it. (Point I, C). Neither the characteristics of a neighborhood – a trait equally applicable to every person who lives in or travels through the area (Point I, C, 1) – nor a person's proximity to others who have walked away from police (Point I, C, 2), nor a person's nervousness when interacting with law enforcement (Point I, C, 3), nor any combination of the three, amounts to reasonable articulable suspicion sufficient to justify a stop.

Even if the stop at issue here were justified, police had no reasonable suspicion that Mr. Goldsmith was armed and dangerous, thus they could not permissibly frisk him for weapons. (Point II). In approving the frisk, the Appellate

Division relied on one additional fact and a legal theory unearthed in forty-year old federal cases. Neither one changes the analysis under the New Jersey Constitution. After officers told Mr. Goldsmith he could not retrieve his identification from his jacket pocket, he asked them not to pat him down. The invocation of a right (not to be unlawfully searched) cannot give rise to a waiver of that right. (Point II, A). Indeed, courts should not consider the fact that he asked not to be searched any more than a court would find a suspect's insistence that he wanted to remain silent as a factor justifying a search.

Finally, citing federal cases, the Appellate Division found that major drug dealers often carry firearms. Such a holding would create a new drug-dealing exception to the rule set forth in *Terry v. Ohio*, an exception this Court has never recognized. And, even so, the officers here had no basis to believe Mr. Goldsmith was a "substantial dealer" of drugs. Indeed, the officers' own subjective hunch was not that Mr. Goldsmith was a kingpin; rather they suspected he was a street-level dealer who had obtained drugs from a stash location. The Court should unequivocally reject the idea that law enforcement can conduct frisks whenever they suspect a person may have bought or sold drugs. (Point II, B).

Statement of Facts and Procedural History

Amicus relies on the statement of facts and procedural history set forth in the unpublished Appellate Division decision, *State v. Goldsmith*, No. A-0652-20, 2021 WL 1037133, at *1 (App. Div. Mar. 18, 2021), but clarifies certain facts and recounts the chronology of events here.

Officer Goonan and his partner were patrolling in what they described as "high crime areas" to "locate wanted people." (1T 5-2 to 5, 10-1 to 5).[1] In the early evening, they saw two men in front of what the officer believed was a vacant home. (1T 12-10 to 15). When the officers got out of their car, the two men walked away. (1T 12-16 to 17, 13-5 to 7). Simultaneously, Mr. Goldsmith exited the walkway alongside the house, which runs between the backyards of at least two homes and the back of a rowhome. (1T 12-12 to 25; Ma 7). The officers became suspicious that Mr. Goldsmith was selling drugs because the area was known for drug sales and he had been in a walkway (1T 15-8 to 17). The officer did not recall whether Mr. Goldsmith said he lived in one of the homes adjacent to the walkway. (1T 26-19 to 24).

The police wore easily identifiable uniforms and were armed. (1T 10-24 to 11-5, 16-6 to 10, 33-17 to 18, 35-19 to 20). They immediately began questioning

[1] "1T" refers to the transcript from September 23, 2020. "Ma" refers to Defendant's Motion Appendix.

Mr. Goldsmith. (*Id*.) Although the officers did not use words to order Mr. Goldsmith to stop, they blocked him from moving forward. (1T 31-1 to 14). As Officer Goonan explained when the prosecutor inquired whether he asked Mr. Goldsmith to stop: "Yeah. We stop – we didn't tell him to stop. He just came out of the [walkway], we were two – two officers standing there." (1T 20-20 to 25). Mr. Goldsmith appeared nervous to the officers, as he was looking up and down the street and was sweating. (1T 16-10 to 13).

The police demanded identification from Mr. Goldsmith. (1T 17-23 to 25). Although Mr. Goldsmith provided his name, he indicated his identification was in his jacket pocket. (1T 18-3 to 5). The officer told Mr. Goldsmith not to reach into his pocket, although he ordinarily allowed people to retrieve their own identification. (1T 18-9 to 14, 42-22 to 43-6). In response to the officer's indication that he would retrieve the identification, Mr. Goldsmith told the officers "I would appreciate it if you guys didn't pat me down." (1T 18-9 to 14, 19-4 to 5). *Because* Mr. Goldsmith made that request, Officer Goonan decided to pat him down. (1T 19-7 to 20-12). The pat down revealed a gun, and Mr. Goldsmith was placed under arrest. (1T 21-1 to 22-2). A subsequent search revealed drugs and money. (1T 22-2 to 21).

The trial court held that the officers had reasonable suspicion necessary to justify a stop. (Ma 12). In reaching this conclusion, the court relied on facts with

no support or basis in the record, specifically that Officer Goonan "observed the two unidentified individuals with defendant" (Ma 7) and "knew that the defendant had been speaking with two other people after emerging from a walkway" (Ma 13). In fact, the officer never testified that the two men had any contact with Mr. Goldsmith. According to the trial court, a seizure occurred "when officers approached [Mr. Goldsmith] and . . . asked for his identification." (Ma 11). Although the court found the *stop* supported by reasonable suspicion, it found the frisk unjustified, and explained that reasonable suspicion that a person possesses illegal drugs does not by itself provide a sufficient basis to justify a frisk. (Ma 14-15). The court therefore granted the motion to suppress. (Ma 18).

The State sought leave to appeal and the Appellate Division reversed. *Goldsmith*, at *1. The Appellate Division did not address the constitutionality of the stop. Rather, based on "the totality of the circumstances[,]" the court found there was reasonable suspicion to justify the frisk. *Id.* at *3.

On July 16, 2021, the Court granted Mr. Goldsmith's Motion for Leave to Appeal. This brief accompanies a timely motion to participate as *amicus curiae*.

Argument

I. Officers lacked reasonable suspicion to stop the Defendant.

"Not all police-ci[vilian] encounters constitute searches or seizures for purposes of [Article I, paragraph 7's] warrant requirement[.]" *State v. Rodriguez*, 172 N.J. 117, 125 (2002). For example, "[a] field inquiry is essentially a voluntary encounter between the police and a member of the public in which the police ask questions and do not compel an individual to answer." *State v. Rosario*, 229 N.J. 263, 271 (2017) (citing *State v. Maryland*, 167 N.J. 471, 483 (2001) and *Florida v. Royer*, 460 U.S. 491, 497–98 (1983)). The hallmark of a field inquiry is that a "defendant, under all of the attendant circumstances, reasonably believe[] he could walk away without answering any of [the officer's] questions." *Id.* at 271-72.

Unlike a field inquiry, an investigative detention, or "*Terry"* stop, occurs whenever an objectively reasonable person would feel that their "right to move has been restricted." *Id.* at 272. Law enforcement may convey to civilians that they are not free to leave through words (*see, e.g., State v. Crawley*, 187 N.J. 440, 444 (2006) (explaining that officer conducted investigative stop when he said "Police. Stop. I need to speak with you.")), tone (*see, e.g., State v. Rodriguez*, 172 N.J. 117, 126 (2002) (noting that an "officer's demeanor is relevant to the analysis" and finding that an overbearing tone supported a finding that an investigative stop had occurred)), or deed (*see, e.g.*, *State v. Davis*, 104 N.J. 490, 495 (1986) (finding

officers engaged in an investigative detention when they turned their vehicle onto the "street in front of [defendants on bicycles] in order to impede their path").

Here, initially, officers seized Mr. Goldsmith based on their tone and deeds. The seizure then became plain when officers demanded his identification.

A. **Defendant was seized before police asked for his identification**.

As soon as Officer Goonan saw Mr. Goldsmith, he and his partner approached him and began "asking him questions, you know, what's your name? Where you from? You live out here? You know, what were you doing in the alleyway?" (1T 16-8 to 10). Although the officer testified Mr. Goldsmith was free to leave (1T 17-17 to 18), the officer's deeds and tone told a different story. The officers stood in front of Mr. Goldsmith, completely blocking his path forward. (1T 31-1 to 13 (explaining that the only way Mr. Goldsmith could have avoided the officers was by returning back down the alleyway)).

In evaluating whether officers blocking a person's path have seized the person, courts do not look to the possibility or impossibility of egress from a particular place: they look to the impact officer behavior would have on a reasonable person. In *Rosario*, for example, officers pulled perpendicularly behind a car parked in a diagonal parking spot; in so doing, the officers made it impossible for the defendant to pull out of the parking spot. *Rosario*, 229 N.J. at 268. Although the defendant could have gotten out of the car and walked inside (*id.* at

273), the Court found that she had been seized. *Id.* Here, even though officers did not block Mr. Goldsmith's way with their vehicle, they blocked his path with their bodies. Again, the question is not whether a person *could* physically get around officers[2], it is whether a person would think that they were *allowed* to do so. *See Davis*, 104 N.J. at 498 (describing how defendants would not have felt free to leave when officer blocked their path with his car, even though, with only one officer there, the defendants could have turned around and pedaled their bikes in the other direction).

Even if the officers' physical presence did not amount to an investigatory stop, their barrage of accusatory questions certainly elevated the encounter from field inquiry to detention. The officers engaged Mr. Goldsmith "[t]o ask him why he was coming out of the alleyway . . . [adjacent to a] vacant property." (1T 15-2 to 4). They bombarded him with question after question: "[W]hat's your name? Where you from? You live out here? You know, what were you doing in the alleyway?" (1T 16-7 to 13), thus intensifying the interaction and contributing to a finding that an "encounter with the police had moved beyond a mere field inquiry." *State v. Rodriguez*, 172 N.J. 117, 129 (2002).

[2] Indeed, moving around the officers under the circumstances could have been physically dangerous for Mr. Goldsmith and police may have found such an action to be evasive or threatening, resulting in even more invasive action or, potentially the use of force.

Whether or not the tone of the questioning was sufficiently "authoritative, indicative of a criminal suspicion, and harassing" (*State ex rel. J.G.*, 320 N.J. Super. 21, 31 (App. Div. 1999)) to convert the encounter into a stop, the combination of the officers' positioning and questioning is certainly of the nature that a reasonable person would not feel free to leave. *See State v. Tucker*, 136 N.J. 158, 164 (1994) (explaining that the standard for determining whether an interaction is an investigative detention is whether a reasonable person would feel free to terminate the encounter).

B. When officers demanded identification, they unquestionably seized Mr. Goldsmith.

Whereas field inquiries are characterized by questions posed by law enforcement "in a manner consistent with what would be viewed as a nonoffensive contact if it occurred between two ordinary ci[vilians]" *State v. Davis*, 104 N.J. 490, 497 (1986) (quoting W.R. Lafave, 3 Search and Seizure, § 9.2 at 53), investigative detentions require police officers to convey that the civilian is not free to leave, as discussed above.

In *State v. Sirianni*, the Appellate Division held that "a police request for identification does not, *by itself*, constitute a seizure or detention" under the Constitution. 347 N.J. Super. 382, 390 (App. Div. 2002) (emphasis added).

Whether or not such a conclusion is correct as a matter of basic logic,[3] no court has ever held that requests for identification are not relevant to the constitutional inquiry into whether an encounter has been elevated to the level of an investigative detention. Indeed, the panel in *Sirianni* acknowledged as much when it utilized a traditional totality of circumstances test and found that the request for identification "*without more* . . . does not invoke 'detention' in the constitutional sense." *Id.* at 391 (emphasis added). Here, of course, there is far more.

This Court and other courts in New Jersey have acknowledged that requests for identification, coupled with other shows of force, require reasonable suspicion. *See, e.g.*, *Rosario*, 229 N.J. at 273-74; *State v. Egan*, 325 N.J. Super. 402, 410–11 (Law. Div. 1999). Police only demanded identification from Mr. Goldsmith *after* they blocked his path and peppered him with questions. These acts alone require reasonable suspicion. The police officer, however, then demanded that Mr. Goldsmith not retrieve his identification himself, allowing the officers to initiate physical contact with him. At this point, the interaction had long left behind any non-offensive contact that normally occurs between two ordinary civilians.

[3] *Amicus* contends that no ordinary civilian would feel free to refuse a law enforcement request for identification, nor would a civilian mistake such a request as "consistent with . . . nonoffensive contact [as it] occur[s] between two ordinary" civilians." *Davis*, 104 N.J. at 497. Although the holding of *Sirianni* may be wrong, it need not be repudiated here to reach the appropriate result in this case.

C. At either point of seizure, police lacked reasonable suspicion.

In order to effect an investigatory detention, Article I, Paragraph 7 requires police to possess reasonable articulable suspicion. *State v. Thomas*, 110 N.J. 673, 678 (1988). The only suspicions suggested by officers were Mr. Goldsmith's presence in the neighborhood and the fact that he was walking down a path adjacent to a vacant house. Later, the officer pointed to Mr. Goldsmith's nervousness as a basis for the stop. None of these factors – separately or together – justify a stop.

1. The characteristics of a neighborhood are insufficient to justify a stop.

Incidences of crime do "not transform a residential neighborhood into a no-man's land in which any passerby is fair game for a roving police interrogation." *State v. Kuhn*, 213 N.J. Super. 275, 281–82 (App. Div. 1986) (quoting *In re Tony C.*, 148 Cal. Rptr. 366, 371 (Cal. 1978)). If presence in a neighborhood deemed "high crime" were sufficient to justify a stop, residents in huge swaths of Camden – and other communities in New Jersey – would effectively live in a zone where Article I, paragraph 7 does not apply. But this Court has made clear that an address "located in a high-crime area does not mean that residents in that area have lesser constitutional protection from random stops." *State v. Shaw*, 213 N.J. 398, 420–21

(2012). Even in areas described as "high crime,"[4] police must be able to provide individualized suspicion, or else mere geography would condemn all residents of (and visitors to) certain communities to limitless police searches. *State v. Chisum*, 236 N.J. 530, 549 (2019).

And, indeed, the data demonstrates that race and geography very often dictate how law enforcement engages civilians, where police violence is disproportionately used, and why the state of distrust is deepened between certain communities and law enforcement. *See, e.g.*, Andrea Cipriano, *The Crime Report,* 'Overpolicing' Still Common in NYC Black Neighborhoods, Report Finds, September 23, 2020 (describing analysis of stop and frisk data from 2003-2018, including significant racial disparities);[5] Human Rights Watch, *"Get on the Ground!" Policing, Poverty, and Racial Inequality in Tulsa, Oklahoma*, 2019, at 8 (documenting aggressive use of stops in predominantly Black North Tulsa neighborhood)[6].

As sociologist Daanika Gordon has explained:

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[4] As aptly described in Mr. Goldsmith's brief, the "high crime" designation provides courts with little useful information, as it lacks objective bases or empirical benchmarks and simply invokes and relies on well-worn racialized shorthand as justification.

[5] Available at https://thecrimereport.org/2020/09/23/overpolicing-still-common-in-nyc-black-neighborhoods-report-finds/.

[6] Available at https://www.hrw.org/report/2019/09/12/get-ground-policing-poverty-and-racial-inequality-tulsa-oklahoma/case-study-us.

> Tasking officers to stop people who appear to be "suspicious" relies on longstanding racial stereotypes . . . saturating "high-crime" areas with police conducting stops will inevitably affect innocent residents of poor, communities of color. Indeed, we see vast racial disparities in stop practices in cities across the country. And we have ample evidence that stops fray police-community relations, undermine the legitimacy of the police, and lead to disproportionate exposure to police violence.
>
> [TuftsNow, *How Racial Segregation and Policing Intersect in America*, June 17, 2020.[7]]

Where courts allow officers' assessment of the particular characteristics of a neighborhood to serve as a basis for stops, they endorse and perpetuate this dangerous pattern that inevitably leads to the unraveling of constitutional rights.

2. Mr. Goldsmith's proximity to a vacant lot and two people who walked away from police did not create reasonable suspicion.

The State's case cannot be salvaged by noting that Mr. Goldsmith was walking near a vacant home and two people – with whom he had no known relationship – walked away when they saw the police. In *Kuhn*, the State sought to justify a search using similar facts. There, an officer "testified that drug activity often occurs when there is a group of three people, a buyer, seller and lookout. . . ." *Id.* at 281. In that case the officer came upon three people, who left when a police van entered a parking lot. The Appellate Division explained: "That action cannot

[7] Available at https://now.tufts.edu/articles/how-racial-segregation-and-policing-intersect-america.

be inculpatory, since it could have been attributed either to coincidence or to the fact that the individuals did not wish to be in the proximity of police, not a commendable, but also not an unlawful attitude." *Id.* at 282. Simply put, "[t]here must be particularized suspicion." *Id.*

Mr. Goldsmith's proximity to a vacant building and other individuals who walked away from police does not create reasonable suspicion. Because those facts could have just as easily been attributable to coincidence or to an innocuous desire to avoid police interactions, police cannot rely on them to establish reasonable suspicion.

3. A defendant's nervousness is insufficient to justify a stop, regardless of the neighborhood.

After officers blocked Mr. Goldsmith's path and peppered him with a series of questions, Mr. Goldsmith "just became like nervous looking up and down the street, started sweating, his hands were shaking." (1T 16-10 to 12). Police officers ascribed his nervousness to consciousness of guilt; but, "[t]hat some city residents may not feel entirely comfortable in the presence of some, if not all, police is regrettable but true." *Tucker*, 136 N.J. at 169. That is one reason why "under the New Jersey Constitution, the appearance of nervousness is not sufficient grounds for . . . reasonable and articulable suspicion . . ." *State v. Carty*, 170 N.J. 632, 648 (2002).

This feeling of discomfort is, not surprisingly, particularly acute among Black people. Policing in certain neighborhoods – especially neighborhoods where people of color tend to live – creates a circular effect: police respond to Black people with increased intensity and violence;[8] people subjected to that treatment seek to avoid those harmful interactions;[9] police then treat Black peoples' desire to avoid interactions as increasingly suspicious. Law enforcement officers' reliance on nervousness, therefore, adds little to the reasonable suspicion equation and merely exacerbates an already frayed community relationship. This is especially so when the other elements relied upon by police officers are the sorts of generalized, non-particular, factors cited by the officer here.

For the reasons set forth above, *amicus* contends that the State cannot defend the stop of Mr. Goldsmith in this case.

II. Officers lacked reasonable suspicion that Defendant was armed and dangerous; suspicion that is required to justify a frisk of his person.

"[W]hether there is good cause for an officer to make a protective search incident to an investigatory stop [(a frisk)] is a question separate from whether it

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[8] *See*, *e.g.*, Disha Raychaudhuri and Stephen Stirling, Black People in N.J. say they're more likely to be punched, kicked by cops. Now, data backs that up., NJ.com (Dec. 17, 2018) (finding Black people are subject to police force at rates many times higher than white people). *See also* Point I, C, *supra*.

[9] *See*, *e.g.*, *Dozier v. United States*, 220 A.3d 933, 944 (D.C. 2019) (noting that "[a]s is known from well-publicized and documented examples, an African-American man facing armed policemen would reasonably be especially apprehensive").

was permissible to stop the suspect in the first place." *Thomas*, 110 N.J. at 678–79. Even if the officers could articulate the reasonable suspicion that Mr. Goldsmith engaged in *any* criminal behavior sufficient to justify a stop, a frisk requires an officer to have "reason to believe that [they are] dealing with an armed and dangerous individual[.]" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Although the officer "need not be absolutely certain that the individual is armed[,] . . . a reasonably prudent [person] in the circumstances [must] be warranted in the belief that [their] safety or that of others was in danger." *Id.*

It is simply not enough for officers to defend a frisk by articulating their hunch that defendant was involved in narcotics sales;[10] officers must explain why their beliefs – or other facts – put them in a reasonable fear for their safety. Here,

[10] As *Amicus* has previously argued, when officers rely on hunches they are, as here, sometimes correct and find contraband. But when they are wrong, which data has shown is the majority of the time in "stop and frisk" cases, and stop someone who was not involved in wrongdoing, they cause significant damage. *See* Brief of *Amici Curiae* 66 Black Ministers and Other Clergy Members Who Have Provided Pastoral Services to Victims of Racial Profiling, A-40-20 *State v. Jamar J. Myers* (082858) and A-39-20 *State v. Peter Nyema* (085146); *see also* American Civil Liberties Union of New Jersey, *Stop-and-Frisk: A First Look*, Feb. 2014, https://www.aclu-nj.org/files/8113/9333/6064/2014_02_25_nwksnf.pdf (finding that "three out of four people stopped in Newark, including many who face interrogation and a frisk, have been determined by the police to be innocent of any wrongdoing"); New York Civil Liberties Union, *Stop and Frisk Data*, 2019, https://www.nyclu.org/en/stop-and-frisk-data, (noting that at the height of stop-and-frisk in 2011 under the Bloomberg mayoral administration in New York City, over 685,000 people were stopped, with nearly 9 out of 10 of those stopped-and-frisked found to be completely innocent).

the State proposed one additional fact to justify the frisk; the Appellate Division utilized another one. Neither justification satisfies the State Constitution.

A. An invocation of a constitutional right neither justifies nor supports a finding of reasonable, articulable, suspicion.

A core principle of New Jersey's search and seizure jurisprudence is that "a person's assertion of a constitutional right should not be used to cast suspicion on him and serve as the excuse to diminish that right." *State v. Frankel*, 179 N.J. 586, 611 (2004). An assertion of the right to be free from unreasonable searches or seizures "is not probative of wrongdoing and cannot be the justification for" a search. *Id*.

Although the Court has since modified part of the holding in *Frankel*, (modified in part on other grounds by, *State v. Edmonds*, 211 N.J. 117, 131 (2012)), the principle cited above remains good law. *Brown v. State*, 230 N.J. 84, 111 (2017) (reiterating that the invocation of a constitutional right to refuse a search "is not probative of wrongdoing and cannot be the justification for" a warrantless search). The very notion of consent – one of the established exceptions to the warrant requirement – assumes that an individual may refuse to provide it and thus requires the State to obtain a warrant or rely upon another exception to execute the search. If, as the State asserts, one's refusal to allow a search provides a basis for that search, police would routinely request consent (without reasonable suspicion) and treat any refusals as reasonable suspicion sufficient to justify a

previously prohibited search. *Cf. Carty*, 170 N.J. at 647 (requiring officers have reasonable suspicion in order to request consent to search as a means of combatting abuse).

If police lacked reasonable suspicion that Mr. Goldsmith was armed when they sought to invade his bodily autonomy to retrieve his identification, his insistence (actually, polite statement of preference) that they follow the Constitution cannot create suspicion. Legitimatization of this behavior would upend the doctrine of knowing and voluntary consent.

B. There is no drug selling exception to constitutional protections against unreasonable searches.

The Appellate Division found the frisk of Mr. Goldsmith permissible, despite New Jersey's clear rule requiring specific suspicion *that the suspect is armed and dangerous* to authorize a frisk. The panel explained its holding:

> [U]nder the totality of the circumstances, the State met its burden of demonstrating the pat down of defendant was justified. Officer Goonan testified the section of Camden where defendant was arrested was a high crime area, known for drugs, weapons, and shootings. In addition, the officer believed he witnessed a drug sale between defendant and the two unidentified men who quickly left the area. Courts "have recognized that to 'substantial dealers in narcotics[,]' firearms are as much 'tools of the trade' as are most commonly recognized articles of narcotics paraphernalia." *United States v. Oates*, 560 F.2d 45, 62 (2d Cir. 1977) (*quoting United States v. Weiner*, 534 F.2d 15, 18 (2d Cir. 1976)).
>
> [*Goldsmith*, 2021 WL 1037133, at *3.]

As noted above, the court's conclusion that Officer Goonan believed he had witnessed a drug sale between Mr. Goldsmith and the two men who left the area is not supported by the record. But, more troubling still is the panel's disregard for the required proof of suspicion that Mr. Goldsmith was, in fact, armed and dangerous. The decades-old federal cases upon which the Appellate Division relied focused on "substantial dealers in narcotics," not street-level dealers or buyers. *Cf. Thomas*, 110 N.J. at 684 (rejecting frisk where tip suggested suspect possessed drugs, but made no mention of him being a high-level dealer); *State v. Arthur*, 149 N.J. 1, 14 (1997) (holding that an "observation of a possible drug transaction between two people c[an]not by itself justify a protective search.").

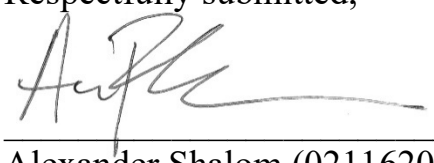
Were the logic of those federal cases extended to every person suspected of participating in a street level drug transaction in New Jersey, the requirement that police possess individualized suspicion that a suspect is armed and dangerous would be obliterated and all New Jerseyans, or at least those who live in neighborhoods designated as "high crime" would be subjected to nearly limitless frisks. The dangers of allowing such an outcome cannot be underestimated and are not hyperbolic: a frisk "performed in public by a police[officer] while the ci[vilian] stands helpless, perhaps facing a wall with [their] hands raised, is [not] a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment" and, as such, "is not to be

undertaken lightly." *Terry*, 392 U.S. at 16-17; *see also* Center for Constitutional Rights, *Stop and Frisk: The Human Impact* (July 2012)[11] (documenting stories of trauma, fear, and humiliation engendered by the stop-and-frisk program employed by the NYPD).

Conclusion

Because officers lacked reasonable suspicion to stop Mr. Goldsmith and because they had no suspicion that he was armed and dangerous, the Court should reverse the order of the Appellate Division, order the seized contraband suppressed, and remand for further proceedings.

Respectfully submitted,



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[11] Available at https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf.