

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

[REDACTED]

Indictment No. [REDACTED]

MEMORANDUM OF LAW

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Hon. Paul Wojtaszek

Erie County District Attorney
25 Delaware Ave.
Buffalo, NY 14202

Mr. ██████ is charged in this indictment with criminal possession of a weapon in the second degree (Penal Law § 265.03[3]). This memorandum of law is submitted in support of his motion to suppress the firearm. A hearing on the motion was held before this Court on ██████.

On the morning of ██████, members of the Amherst Police Department were conducting surveillance of suspected prostitution at the Red Roof Inn (16; numbers in parentheses refer to pages of the hearing transcript). A detective had become privy to text messages suggesting that prostitution was taking place at that location (20-21, People's Exhibit 2). Detective ██████ observed two black males, including Mr. ██████, and a white female going in and out of Room 148 (17, 21). When Walsh entered the building and approached the room, he found Mr. ██████ and the other black male sitting on a stairwell (22). Walsh and another detective approached Mr. ██████ identified themselves, and said, "come on over here" (22). Mr. ██████ walked with ██████ and put his hands against the wall, but ██████ said, "no, come on down here" (22). As he was leading him down the hallway, ██████ asked Mr. ██████ if he had anything on him (22). Mr. ██████ replied that he had a gun (22).

Mr. ██████ testified that Detective ██████ had already started patting him down when he admitted to having a gun on him (52).

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" (US Const Amend IV; NY Const Art I, § 12). Because the seizure of Mr. [REDACTED] was not supported by reasonable suspicion, and the firearm was recovered as a result of the unlawful seizure, suppression is required.

I. The defendant was seized prior to recovery of the firearm.

Under New York law, a citizen is seized "if the police action results in a significant interruption of the individual's liberty of movement" (*People v. Bora*, 83 NY2d 531, 534 [1994]). An interruption may result from the use of force or because the citizen "submits to the authority of the badge" (*id.*, at 534-535). The analysis requires the Court to consider and balance the following factors: (i) "was the officer's gun drawn"; (ii) "was the individual prevented from moving"; (iii) "how many verbal commands were given"; (iv) "what was the content and tone of the commands"; (v) "how many officers were involved"; and (vi) "where the encounter took place" (*id.*, at 535). Ultimately, the test is "whether a reasonable person would have believed, under the circumstances, that the officer's conduct was a significant limitation on his or her freedom" (*id.*).

Mr. [REDACTED] was confronted by two identified police officers, issued two forceful verbal commands, and led down a hallway. The fact that he immediately put his hands against the wall indicates that he felt a significant limitation on his

freedom -- as anyone in his position would have. And there is one additional factor that strengthens the conclusion that Mr. ██████ was seized: his race.

In *State v. Sum*, the Washington Supreme Court held, in finding that a seizure had taken place under the state constitution, that the defendant's race had to be taken into account (511 P3d 92, 97 [Wash. 2022]). The court recognized that "an objective observer is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in disproportionate police contacts, investigative seizures, and uses of force against Black, Indigenous, and other People of Color (BIPOC) in Washington" (*id.*).

The same is true of New York. Although not binding, this opinion is highly persuasive. It aligns with the New York test, which requires the Court to place itself in the defendant's position, and it recognizes a fundamental truth.

Mr. ██████ was seized.

II. The police lacked reasonable suspicion for the seizure.

In order to justify a seizure, the police must have reasonable suspicion that a citizen either (i) is committing, has committed, or is about to commit a crime (CPL 140.50[1]; *People v. DeBour*, 40 NY2d 210, 223 [1976]) or (ii) is armed and dangerous (CPL 140.50[3]; *Terry v. Ohio*, 392 US 1, 27 [1968]).

When it came to Mr. [REDACTED], the police knew only that he was present at a hotel where criminal activity was taking place. In that regard, it is analogous to an individual being in proximity to a known drug house. In *People v. Martinez-Gonzalez*, the Fourth Department ordered the suppression of evidence where "[b]ased on defendant's proximity to a suspected drug house and his otherwise innocuous behavior, the officer had, at most, a founded suspicion that criminal activity was afoot, which permitted him to approach defendant and make a common-law inquiry" (188 AD3d 1593, 1594 [4th Dept. 2020]). The same logic holds true in this case. The police had, at most, founded suspicion -- and, as the text messages did not mention Room 148, they did not even have that. The seizure, questioning, and frisk of Mr. [REDACTED] were unlawful.

The firearm should be suppressed.

[REDACTED]
Buffalo, New York

[REDACTED]