THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0124

State of New Hampshire

v.

Shawn M. Minson

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE CHESIRE COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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(15 minutes oral argument)

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ISSUES PRESENTED

I. Whether the Court erred in denying the defendant's motion to suppress pursuant to the "protective sweep" doctrine.[1] DA 15-43; DB 30-44; M1 3-71.

II. Whether the court erred in denying the defendant's motion for a new trial, in light of the information contained in a belatedly disclosed police report. M2 2-12; DA 54-71, 88-92; DB 45-55.

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[1] Citations to the record are as follows:
"DB_" refers to the defendant's brief, and the appendix attached to the brief and page number;
"DA_" refers to the appendix to the defendant's brief, filed as a separate document and page number;
"T_" refers to the transcript of the stipulated-facts bench trial, held on September 20, 2018 and page number;
"M1_" refers to the transcript of the hearing on the motion to suppress, held on August 6, 2018 and page number;
"M2_" refers to the transcript of the hearing held on October 26, 2018 and page number; and
"S_" refers to the transcript of the sentencing hearing, held on February 1, 2019 and page number.

STATEMENT OF THE CASE

The Cheshire County grand jury charged the defendant, Shawn Minson, with three felony indictments: possession of cocaine, RSA 318-B:2 and RSA 318-B:26; possession with intent to dispense the controlled drug fentanyl in a quantity of five grams or more, RSA 318-B:2 and RSA 318-B:26; and possession with intent to dispense the controlled drug cocaine in a quantity of five grams or more, RSA 318-B:2 and RSA 318-B:26. DA 3-5. The drugs at issue were seized from the defendant's motel room as part of a warrantless search, which the defendant sought to suppress. DA 15-23. The State objected to suppression, arguing that the search was justified under the "protective sweep" doctrine. DA 24-31. After a substantive evidentiary hearing, M1 3-71, the court (*Ruoff*, J.) denied the defendant's motion to suppress. DB 30-44.

The defendant was subsequently convicted of all three charges after a stipulated-facts trial, in which the defendant stipulated to the facts as they were elicited at the hearing for the motion to suppress. T 3-14; M1 3-71. After the defendant was convicted, but prior to being sentenced, the State made a late disclosure of a single police report, and the defendant filed a motion requesting a new trial, arguing that the report contained exculpatory information. DA 54-59. The State objected to the defendant's motion. DA 60-87. The court denied the defendant's motion. DB 45-55. The defendant filed a motion to reconsider, DA 88-92, M2 2-13, which the court also denied. DA 92.

For possession of fentanyl with intent to distribute, the defendant was sentenced to a stand-committed term of three to six years, with six

months of the minimum suspended. S 28-29; DA 6-8. For the possession of cocaine charge, the defendant was sentenced to a concurrent twelve-month term. S 29-30; DA 12-14. For possession of cocaine with intent to distribute, the court imposed a consecutive, suspended term of six to twelve years. S 30-31; DA 9-11.

This appeal followed.

STATEMENT OF FACTS

The defendant resolved the charges via a stipulated-facts bench trial, in which the defendant stipulated to the facts as elicited at the August 6, 2018, motion to suppress hearing. T 10-11; M1 3-71. On November 28, 2017, at about 2:04 a.m., State Police Trooper Aaron Gillis received and investigated a report of a "road-rage" incident involving the defendant. M1 7-10, 44-45; DA 34-35. The report alleged that the defendant, apparently angry with a woman who had turned on her vehicle's high beam lights while driving behind the defendant's vehicle, began a protracted campaign to harass the woman. M1 7-10; DA 34-35.

The defendant's conduct included following the woman after she had made a turn onto another road, and driving his vehicle very closely behind her own. DA 34; DB 30-3 45-47. She told police that at one point the defendant exited his vehicle and screamed, "what the fuck is your problem!" DA 34; DB 30-33, 45-47. The defendant then drove in front of the woman's vehicle, driving past her in a "no passing zone," and began driving at a speed of five miles per hour in front of the woman's car, while aggressively braking his vehicle. DA 34; DB 30-33, 45-47. Subsequent to this conduct, the defendant drove his vehicle next to the woman's vehicle, within the same lane of operation as the woman, and suddenly drove his vehicle toward her vehicle, almost forcing the woman off the road. M1 7-10; DA 34-35; DB 30-3 45-47. At that point, the woman pulled into a nearby driveway, and waited until she could no longer see the taillights of the defendant's vehicle. DA 34-35; DB 30-3 45-47.

Because the defendant was the registered owner of the vehicle, Trooper Aaron Gillis went and spoke with the defendant the following morning, where he was residing at that time, in Alstead, NH. M1 7-10; DA 34. The defendant admitted an incident had occurred, and that he had slowed his vehicle down in front of the woman's car, after she had turned her high beams on. DA 34; DB 30-3 45-47. The defendant also admitted to driving his vehicle "left of center," and said that the woman "was an asshole," and that he thought she might be impaired. M1 7-10; DA 34; DB 30-3 45-47.

On January 28, 2018, the State Police received additional information from a confidential informant that the defendant was staying at the Days Inn motel in Keene, NH, and that he was selling narcotics. M1 11, 22-26, 47. After having received these additional allegations of the defendant's criminal conduct, the State Police Troopers decided to present an arrest warrant affidavit for the November 28, 2017, road rage incident, and a warrant issued for the defendant's arrest. M1 11-12, 21-22, 27-28, 46, 52-54.

To effectuate the arrest, five State Police Troopers traveled to the Days Inn motel. M1 14, 29-31, 45, 47. A sixth Keene police officer called the defendant's motel room, and asked the defendant to come to take care of same paperwork, while the other officers positioned themselves outside of the defendant's room, to arrest him when he exited the room. M1 14, 29-31, 45, 47-48. Shortly after the phone call was made, the defendant opened the door to the motel room and the officers took him into custody. M1 14, 31-33, 48-49, 58.

Immediately and contemporaneously with the defendant being taken into custody, Sergeant Daniel Brow, who was the ranking trooper at the scene, was able to see three unknown women in the defendant's motel room, through the open door. M1 47-51. Trooper Brow could see that the woman located furthest into the room was seated in a chair, but the two women located closest to the door were standing. M1 47-51. Trooper Brow watched as the woman closest to the door immediately turned her back toward the officers, adopting what Trooper Brow described as a "bladed stance," which he described as the woman turning quickly and putting her back toward the officers and the door. M1 47-51. Trooper Brow could also see that after she turned her back toward the officers, she was moving her arms and hands, M1 47-51. The other woman who was standing was moving as well, but Trooper Brow's vision of that woman was obscured by the woman who had turned her back to him. M1 47-51. The room was filled with smoke. M1 50-51.

Concerned for the immediate safety of the officers at the scene, Trooper Brow instructed other officers to enter the room and secure the two women who were moving around. M1 51. Trooper Aaron Gillis then entered the room and saw a "wad" of cash in plain-view on a bed, next to what he recognized as an illegal narcotic. M1 13-14. Once the women were secured and identified, the officers withdrew from the room and applied for a search warrant. M1 17-18, 41-42. After the warrant was granted, the officers returned and searched the motel room. M1 17-19, 41-42, DA 50-51. During the search the officers found multiple bags of crack cocaine and heroin, and found drug paraphernalia including crack pipes, burnt spoons, and syringes in the motel room. M1 17-19, 41-42, DA 50-51. Police also

found items associated with drug distribution, including a digital scale and boxes of plastic bags. DA 50-51.

SUMMARY OF THE ARGUMENT

I. The Court did not err in in denying the defendant's motion to suppress. A protective sweep is a procedure rooted in protecting police officers as they carry out their duties in uncertain and rapidly evolving situations, like the one in the immediate case. There were multiple specific, articulable facts upon which the court properly relied in finding the protective sweep of the defendant's motel room was justified. The officers had prior knowledge that the defendant had recently been involved in a violent incident of road rage, and also recently sold drugs. As the defendant was being taken into custody, the officers suddenly encountered three unknown women in a smoke-filled room, one who immediately turned her back to them, and began moving her arms and hands out of their view. A second woman, whose position behind the first woman, prevented the officers from seeing her, and also began moving around. These specific and articulable facts justified Sergeant Brow's belief that the unknown women posed a danger to the arresting officers on scene.

II. The Court did not err in denying the defendant's motion for a new trial following the State's late disclosure of a police report. The defendant now attempts to argue his motion requesting a new trial as a motion to reconsider his motion to suppress the drugs discovered by the protective sweep of his motel room, but the defendant has not preserved this argument for appeal. Even if the defendant had preserved the issue for appeal, the court did not err in denying the defendant's motion for a new

trial, because the additional police report was generalized, brief, and substantially corroborative of the evidence presented by the State.

ARGUMENT

I. THE TRIAL COURT COMMITTED NO ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS.

The trial court properly relied on the evidence presented at the suppression hearing in denying the defendant's motion. The State presented ample evidence that supported the officers' entry into the defendant's motel room under the protective sweep doctrine. The court did not err.

On appeal, this Court will "accept the trial court's factual findings unless they lack support in the record or are clearly erroneous. . . ." *State v. Francis*, 167 N.H. 598, 602 (2015); DB 14. The court will review the trial court's legal conclusions *de novo. Id.*

In *State v. Smith*, 141 N.H. 271, 275-276 (1996), the State argued that the police had a legitimate concern for their safety, so a protective sweep of a bedroom was justified. This Court agreed, saying:

> In [*Maryland v.*] *Buie*, [494 U.S. 325(1990)] the United States Supreme Court held that under the principles of *Terry v. Ohio*, 392 U.S. 1, 88 (1968), and *Michigan v. Long*, 463 U.S. 1032 (1983), "[t]he Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Buie*, 494 U.S. at 337. Such a sweep, "aimed at protecting the arresting officers, if justified by the circumstances," *id*. at 335, is properly limited if it extends "only to a cursory inspection of those spaces where a person may be found. The sweep may last no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises," *id*. See generally 3 W.

> LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 6.4(c), at 323–35 (3d ed. 1996).

DA 29. The reasonableness of a warrantless entry is thus a highly fact-specific inquiry, consisting of two primary components. First, the pre-existing knowledge the officers have prior to arriving at a scene regarding the prospective dangers they might encounter; and second, the information presented to officers about possible dangerousness as any given encounter unfolds in real time. *See State v. Francis* 167 N.H. 598, 602 (2015); *Smith*, 141 N.H. 271, 275-276. These two components are not mutually exclusive, and the former often frames the latter in a more developed context. *See id*.

With regard to the first component, as the defendant accurately states, in *Francis*, this Court found the requisite suspicions of danger where Francis "was a convicted felon, had violated parole, had access to a gun, had a history of threatening others with his gun, and was suspected of selling heroin from his home." *State v. Francis* 167 N.H. 598, 602 (2015); DB 16-17. The defendant contends that the State introduced "no comparable evidence at the suppression hearing in Minson's case," but this claim contradicts the record. DB 16; M1 7-11, 22-26, 47; DA 34-35.

The police were aware that two months before arresting him, the defendant had engaged in a violent incident of "road rage," where he followed a woman in his vehicle, exited his car to scream at her, and proceeded to pull his vehicle next to her vehicle before driving at the other car, almost forcing the woman off of the road. M1 7-11; DA 34; DB 30-3 45-47. While there was no clear catalyst for the event, the woman gave a statement where she said the defendant's vehicle passed her on the road, and that she had turned the high beams of her vehicle on after the defendant

drove past, once she had lost sight of her vehicle. M1 7-11, DA 34; DB 30-3 45-47. The incident took place at around 2:00 a.m. in the morning. DA 34; DB 30-3 45-57. Further, similar to *Francis*, the police had knowledge from a confidential informant that the defendant sold drugs. *State v. Francis*, 167 N.H. 598, 602 (2015); M1 11, 22-26, 47. The officers testified that the defendant was selling the drugs from the motel where he was staying, which is also where the defendant was at the time the police arrested him. M1 14, 29-31, 45, 47. While in isolation this pre-existing knowledge may not have provided the officers with a proper justification for a protective sweep of the defendant's motel room, this prior knowledge is critical in providing context for the officers and in understanding their evaluation of what they encountered at the scene at the time they arrested the defendant. M1 13, 31-33, 48-49, 58.

In denying the defendant's motion to suppress, the court also properly relied upon the information that rapidly unfolded to the officers in "real time," as they went to arrest the defendant after he opened the door to his motel room. *See Francis,* 167 N.H. at 602; DB 34-37. At the time the defendant opened the door to his motel room and was taken into custody, the supervising officer, Sergeant Brow, saw that the motel room was "full of smoke," and contained three unknown woman, two of whom were standing in the room. M1 47-51. Critically, Sergeant Brow testified that despite all of the information he had up to that point, he did not order a protective sweep, until the woman who was standing closest to him turned her back toward the officers and began moving her arms and hands. M1 47-51. Though his vision of the second woman was obscured by the first, he could see that she was also moving. M1 47-51. It was these actions, in light

of the information he possessed up that point, that led to his belief that the women posed a potential and present threat to the safety of the officers, which triggered the need for a protective sweep. M1 47-51. Expounding on why the movements from the women concerned Sergeant Brow, he testified to the following example from his personal experience as a law enforcement officer:

> "To me, a female is just as dangerous as a male. I've had occasion – you know, thinking back on this case, I've had occasion, standing in a room with a female and just watching, you know, her – her movement or movements, trying to monitor that, and very quickly – in one particular case, very quickly, those – watching her movements, quickly advanced across the room and we were in a kitchen, and picked. . . .up a butcher knife."

M1 49-50.

The defendant argues that "the fact that police believed Minson to be dealing 'a large quantity of crack cocaine' does not establish that the other people in his room at the moment of the arrest posed any danger." DB 15. To support this position, the defendant highlights that the confidential informant did not specifically "indicate that Minson worked with associates while dealing drugs, nor did the informant mention seeing Minson with any weapons." DB 15; M1 26-27. The officers lacked knowledge about the women, including who they were, and what had been going on in the room. M1 3-71. Just as the confidential informant did not tell the officers that the defendant sold his narcotics with fellow associates, the confidential informant did also not inform the officers whether the defendant lived alone, had a significant other, lived with family members, had roommates, or any other information that might have tended to diffuse the officers'

apprehension in encountering three strangers, at the time they were arresting an individual suspected of selling drugs for profit. M1 3-61; DB 15. As the California Appeals Court stated in *People v. Simpson*:

> "Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons. Particularly where large quantities of illegal drugs are involved, an officer can be certain of the risk that individuals in possession of those drugs, which can be worth hundreds of thousands and even millions of dollars, may choose to defend their livelihood with their lives--or, in this case, with the lives of 14 Rottweilers, the Luddite equivalent of a cache of AK-47's."

76 Cal. Rptr. 2d 851, 856 (Ct. App. 1998).

Ultimately, the defendant conflates a lack of additional aggravating facts with a lack of existing requisite "specific and articulable facts," that justified the reasonable belief by the officers that the women in the motel room posed a danger to the officers. The applicable standard as described in *Smith* requires an evaluation of the totality of circumstances in determining the reasonableness of the officer's belief that the defendant's motel room contained individuals who posed a present danger to the officers. *See State v. Smith*, 141 N.H. 271, 275-276 (1996); *See also State v. Francis*, 167 N.H. 598, 602 (2015). In isolation, any of the facts the trial court cited in finding the protective sweep justified may not have been sufficient to justify a protective sweep, but when viewed as a whole, the trial court could easily conclude that at the time the police went to arrest the defendant for charges related to a recent and violent incident of road rage, and for whom they had evidence to suspect was selling drugs, reasonably assessed that the

strangers they encountered in a smoke-filled room, one of whom immediately turned her back to the officers and began moving her arms and hands, posed a present danger to the officers. *See Smith*, 141 N.H. 271, 275-276; *Francis*, 167 N.H. 598, 602 (2015); DB 34-37; M1 3-71. The trial court's findings are supported by the record, are not "clearly erroneous," and therefore the denial of the defendant's motion to suppress should be affirmed. *Francis*, 167 N.H. 598, 602; DB 34-37.

II. THE TRIAL COURT COMMITTED NO ERROR IN DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL.

The defendant accurately states that after the stipulated-facts trial, but before the court sentenced the defendant, the State discovered, and disclosed to the defense, a police report authored by Keene police officer Andrew Vautrin. DB 19; DA 54-59, 67. The relevant portion of the report stated in substance that:

> Gillis talked with [confidential informant name redacted] [and] was able to get the information that [name redacted] bought an eight ball [street slang for drugs] from Shawn Minson at the Price Chopper in Keene the night prior. [Name Redacted] informed Trooper Gillis that Shawn was staying at the Days Inn in Keene.

DB 19; DA 67. The late disclosure occurred after a request from the prosecutor to Officer Vautrin to turn over any police reports written in relation to the defendant's arrest was lost in an email spam-folder. M2 8-9.

The defendant filed a pleading titled "Defendant's Motion for New Trial." DA 54. Although the motion asked the court to vacate the defendant's conviction and order a new trial, the defendant now concedes on appeal that the evidence contained in Officer Vautrin's report "would not have been favorable at trial," and argues that the Court should consider Officer Vautrin's report as it relates to the motion to suppress. DB 22-23.

The trial court decisively dealt with this issue, and offered the following footnote in its decision to deny the defendant's motion for a new trial:

> Even if styled as a motion to reconsider the suppression order, there is nothing in the report that would have impacted the

> Court's analysis in denying the motion to suppress. Officer Vautrin's report is generalized, quite brief, and does not articulate anything that the Court could discern as impeaching the evidence introduced at the hearing on the motion to suppress. In fact, the report is substantially corroborative of the State's evidence.

DB 53. The court was correct in finding that the report was corroborative of the State's evidence, because it reaffirmed that the defendant had sold an "eight ball" of cocaine to an individual at a store located within walking distance from the motel in which he was residing. DA 67. The report also confirmed that the confidential informant was aware the defendant was residing at the Days Inn, in Keene, NH. DA 67.

The defendant argues that "in its last part of its analysis, the order focused on the potential significance of Vautrin's information at a trial, rather than a suppression hearing." DB 22, 54. However, the court did directly address this issue when it specifically stated that the information contained in the report would have no impact on the court's decision to deny the defendant's motion to suppress, and found that the report was largely corroborative of the State's evidence. DB 53. Insofar as the defendant comments on the court's additional discussion of the value of Officer Vautrin's report as it relates to a new trial, this argument is superfluous, as the defendant now agrees that the information contained in the report would not have been favorable at trial, and "presses only the claim that the evidence would have been favorable at the suppression hearing." DB 23-26. The court had no choice but to address such additional arguments, as the defendant did not clearly articulate this current position in his initial motion for a new trial. DA 54-59.

Addressing the value of Officer Vautrin's report as it relates to a motion to suppress, to the extent the defendant argues the report minimizes the amount of drugs the defendant was selling, the report still corroborates that Minson had recently sold cocaine. DA 67. The report also corroborates a reasonable inference that Minson might have stored his drugs at the Days Inn Motel, where he resided. DA 67. Further, the fact that police possessed evidence that Minson was an individual who sold drugs constituted only a single, specific and articulable fact that tended toward justifying the protective sweep. *Supra* at 7-9. The trial court relied on additional specific and articulable facts in denying the defendant's motion to suppress, beyond the fact that the defendant was a known cocaine dealer who resided at the Days Inn. DB 30-37, 43-44; *Supra* 7-9. In concluding its denial of the defendant's motion to suppress, the trial court held: "there are thus sufficient articulable facts to support that the troopers' protective sweep was reasonable to ensure that the women moving around and turning away from them were not posing a danger." DB 37. For the aforementioned reasons, the Court should affirm the trial court's decision to deny the defendant's motion for new trial.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests a fifteen-minute oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Shane B. Goudas, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 4,107 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

May 11, 2020 /s/*Shane B. Goudas*
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CERTIFICATE OF SERVICE

I, Shane B. Goudas, hereby certify that a copy of the State's brief shall be served on Christopher M. Johnson, Chief Appellate Defender, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

May 11, 2020 /s/*Shane B. Goudas*
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