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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-1773-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAWN J. O'MALLEY, a/k/a
OMALLEY SHAWN,

Defendant-Appellant.

Submitted February 6, 2017 – Decided February 24, 2017

Before Judges Sabatino and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
14-09-2825.

Joseph E. Krakora, Public Defender, attorney
for appellant (Jay L. Wilensky, Assistant
Deputy Public Defender, of counsel and on the
brief).

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Maura G. Murphy,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Pursuant to a plea agreement with the State, defendant Shawn
O'Malley admitted his guilt to second-degree unlawful possession

of a weapon, N.J.S.A. 2C:39-5(b), specifically a handgun police seized from his backpack. The trial court sentenced defendant consistent with the plea agreement to a five-year custodial term, with a three-and-a-half-year period of parole ineligibility. The two other counts of the indictment were dismissed.

Defendant now appeals, raising the following single issue in his brief:

POINT I

THE SEARCH OF THE DEFENDANT'S BACKPACK AFTER HE WAS ARRESTED VIOLATED HIS CONSTITUTIONAL PROTECTIONS AGAINST UNLAWFUL SEARCH AND SEIZURE, AND THE GUN SEIZED AS A RESULT MUST BE SUPPRESSED. U.S. CONST., AMENDS. IV, XIV; N.J. CONST. (1947), ART. 1, PAR. 7.

Having considered this argument in light of the record and the applicable law, we affirm.

We glean the following facts from the testimony of Runnemede Police Officer Joseph Marchese, the sole witness who testified at the pretrial suppression hearing. At approximately 3:30 p.m. on July 25, 2014, Officer Marchese was on patrol with another Runnemede patrolman named Wark.¹ The officers were notified by their Police Chief that he had received an anonymous call reporting possible drug use by a white female and a white male in a car parked in front of a residence on Orchard Avenue. The officers

¹ The record does not disclose Officer Wark's first name.

drove to that location. When they arrived a few minutes later, Officer Marchese noticed a gold Nissan Maxima parked in front of the residence. There were no occupants in the car at that time, and no other vehicles in close proximity.

Officer Marchese radioed the police dispatcher to ascertain the identity of the Nissan's owner. According to the dispatch report, the Nissan was unregistered and owned by a female with a suspended driver's license and outstanding warrants for her arrest.

Shortly thereafter, a white male and a white female walked out of the residence. The officers approached the couple on the sidewalk and requested them to identify themselves. The male identified himself as defendant. The female identified herself by the name of the Nissan owner with outstanding warrants. Because of her active warrants, the officers arrested the female and placed her in the back of Officer Marchese's patrol car.

The arrested female requested that the police allow defendant to retrieve some belongings from her Nissan and lock the car up. Officer Marchese took the car keys from the female and handed them to defendant. In order to roll up the car's power windows, defendant tried to start the Nissan by turning its ignition. Oddly, he did this while leaning into the car rather than by taking the driver's seat. Defendant was unable to get the car to start

and asked Marchese for assistance. The officer walked over and placed himself in the "door jam" of the vehicle, behind defendant.

At that point, defendant tried to stand upright. According to Marchese, defendant lost his balance and "kind of fell into" the officer. Perceiving that defendant was "going to fall over[,] " Marchese asked him if he was okay. Defendant then blurted out that he had "just smoked a blunt² inside the house," and queried, "that's not illegal, is it?"³ Marchese asked defendant if he had anything on him that the police officers needed to know about, which defendant initially denied.

Officer Marchese then asked defendant about the contents of a backpack that defendant was wearing. Defendant responded that it contained his gym clothes. Marchese then asked him if the officers could look inside the backpack, to which defendant replied, "[Y]eah, you can check it." Marchese asked defendant for the backpack, which prompted defendant to "look[] around" and start to back away from the officers. Since it appeared that

² A blunt has been defined as "a cigar shell filled with marijuana." State v. Heisler, 422 N.J. Super. 399, 409 (App. Div. 2011).

³ Defense counsel stated during his closing argument at the suppression hearing, which the trial court accepted, that defendant also admitted to the officer "I'm high as hell[,] " even though the transcribed testimony does not contain that assertion.

defendant was refusing at that point to give the officers the backpack, the officers decided to place defendant under arrest.

The officers grabbed defendant and attempted to put him in handcuffs, but were not immediately able to do so because he resisted "a little bit." Eventually, the officers removed the backpack from defendant, placed it on the ground, and secured him in handcuffs.

According to Marchese's unrefuted testimony, just as he was about to place defendant in Officer Wark's patrol car, defendant shouted, "[T]here's a gun in the bag." Officer Wark then opened the backpack and found a Colt revolver inside. The officers seized the revolver, which became the basis for the State's ultimate charge of a weapons offense. Officer Marchese searched defendant and found a syringe in one of his pants pocket.

The officers then contacted a nearby police detective, who arrived at the scene within approximately two minutes. Defendant told the detective there was a safe in his residence that he wanted to turn over to the police. The detective provided a consent-to-search form to defendant for the residence, which he signed. The detective also read defendant Miranda⁴ warnings.

⁴ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After signing the consent form, defendant went with the officers inside the residence. He led them to a bedroom and pointed out a safe, providing the officers with the key. The officers took the safe outside and opened it. They found in the safe spent bullet shell casings and some drug paraphernalia.

After hearing Officer Marchese's testimony and the arguments of counsel, Judge Steven J. Polansky granted defendant's motion to suppress in part and denied it in part. Specifically, the judge granted suppression of the evidence found in and relating to the safe, as well as defendant's statement to the police relating to the syringe. However, the judge denied suppression of the gun and the syringe.

In his analysis of the search-and-seizure issues, Judge Polansky found that Officer Marchese's testimony was credible. The judge also determined that the police had probable cause to arrest defendant in light of his behavior and statements at the scene, and the information known to the police at that time, given the totality of circumstances. Among other things, the judge noted the confirmed anonymous tip of drug activity, defendant's loss of balance in falling into Officer Marchese, and his admission to police that he had just smoked marijuana. The judge further concluded that it was appropriate for the police to have seized the backpack, which they reasonably could have thought to contain

drugs and should not have left unattended in the neighborhood. Moreover, defendant's spontaneous admission that the backpack contained a gun provided ample justification for the police to open the backpack and confiscate the weapon without waiting to obtain a warrant. The judge also validated the officers' search of defendant's person incident to his lawful arrest, which yielded the syringe. However, the judge nullified the ensuing police search of the residence and the safe, as well as defendant's statement relating to the safe given before he was provided with post-arrest Miranda warnings.

We review the trial court's findings at the suppression hearing with a considerable degree of deference. In general, "[w]e are obliged to uphold the motion judge's factual findings so long as sufficient credible evidence in the record supports those findings." State v. Gonzales, 227 N.J. 77, 101 (2016) (citing State v. Elders, 192 N.J. 224, 243-44 (2007)). Applying that standard of review and well-settled principles of constitutional law, we affirm the trial court's rulings concerning the gun and the syringe, substantially for the sound reasons articulated in Judge Polansky's oral opinion.


We agree with Judge Polansky that the officers had ample probable cause to arrest defendant for an apparent drug offense, in light of the informant's tip, defendant's loss of balance

falling into the officer, other peculiar behavior at the scene, and his unprompted admission that he had just been smoking a "blunt." The police surely had a "well-grounded suspicion that a crime has been or is being committed." State v. Nishina, 175 N.J. 502, 515 (2003) (quoting State v. Sullivan, 169 N.J. 204, 211 (2001)).

The ensuing warrantless search of defendant's backpack and the seizure of the gun after defendant spontaneously revealed what was inside of it was justified and lawful under the search-incident-to-arrest doctrine. See Chimel v. California, 395 U.S. 752, 756, 89 S. Ct. 2034, 2036, 23 L. Ed. 2d 685, 689-90 (1969); State v. Dangerfield, 171 N.J. 446, 461 (2002). The police properly searched the backpack as an item within defendant's "immediate control." See State v. Oyenusi, 387 N.J. Super. 146, 153 (App. Div. 2006), certif. denied, 189 N.J. 426 (2007). The police sensibly acted immediately to safeguard the public from the danger posed by the gun, confiscating it to assure that no one else could have access to it. In addition, the seizure of the syringe found on defendant's person was also patently lawful.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION