

**NOT FOR PUBLICATION WITHOUT THE  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-2400-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ASIM Q. JULES,

Defendant-Appellant.

---

Submitted May 10, 2017 – Decided July 26, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey,  
Law Division, Monmouth County, Indictment No.  
15-02-0343.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Stefan Van Jura, Deputy Public  
Defender, of counsel and on the brief).

Christopher J. Gramiccioni, Monmouth County  
Prosecutor, attorney for respondent (Alissa  
Goetz, Assistant Prosecutor, of counsel and  
on the brief).

PER CURIAM

Defendant Asim Jules appeals from his conviction for third-  
degree possession of alprazolam (Xanax), N.J.S.A. 2C:35-10(a)(1).

The judgment of conviction was based on defendant's guilty plea,

following his indictment for fourth-degree obstruction, N.J.S.A. 2C:29-1, and third-degree possession of alprazolam. The judge sentenced defendant to two years of probation and a six-month suspension of his license, along with fines and penalties.

Defendant's appeal focuses solely on the denial of his motion to suppress evidence obtained from a strip search, which police conducted at their headquarters after his arrest. Having reviewed the suppression record and the applicable law, we are compelled to reverse.

#### I.

We discern the following facts from the suppression hearing. On September 19, 2014, at approximately 1:42 a.m., Officer Aaron Lay of the Neptune Township Police Department observed a vehicle pass by his parked patrol car and slow down at a traffic light; at that point, the vehicle's passenger side brake light failed to illuminate. Officer Lay followed the vehicle and entered its license plate number into his mobile data terminal (MDT) system. The MDT check revealed the vehicle's registration had expired, and the license of the registered owner had been suspended.

Upon learning this information, Officer Lay stopped the vehicle and exited his patrol car. As he approached the driver's side of the vehicle, he detected an "overwhelming odor of raw marijuana," which "became stronger and more pungent" as he drew

closer. Officer Lay observed defendant in the driver's seat and noted he was the only person in the vehicle. The officer obtained defendant's vehicle registration card, which he confirmed was expired. Defendant said he was coming from a party; he denied any prior arrests, but a records check revealed a prior arrest for marijuana possession in 2013.

After backup arrived, Officer Lay asked defendant to step out of the vehicle because of the marijuana odor. According to the officer, the odor became stronger as defendant exited the vehicle and seemed to emanate from his person. Officer Lay proceeded to search defendant, beginning with his pockets. The officer then reached into defendant's groin area, where he felt a round, hard, cylindrical object made of plastic or similar material. Officer Lay testified as follows regarding this object:

Q. Based on those observations – what you could feel, what did you believe it to be?

A. I suspected that it was most likely a prescription pill bottle.

Q. And how did you know – what made you believe that it was a pill bottle?

A. I've handled them in the past so I was familiar with it.

Q. In . . . your work as a police officer?

A. Yes, ma'am.

Q. Did the discovery of the pill bottle near the groin alert you to anything?

A. It's just a common place that subjects will frequently store contraband drug or items to conceal them from law enforcement.

Upon discovery of the object, defendant became "antagonistic" and attempted to "twist away" from Officer Lay. Defendant stated the object was his genitalia, but Officer Lay did not believe him. Defendant made the search difficult by "moving around" and at one point "took a step backwards and began to fall on the ground." The police placed defendant in handcuffs so they could continue the search; however, they eventually ended the search because of defendant's continued noncompliance and secured him in back seat of the patrol car, which began to smell of marijuana. Defendant admitted to another officer he had smoked marijuana in his car, but none remained in his vehicle. Officer Lay affirmed he arrested defendant "based off the smell of marijuana and what [he] fe[lt] at [that] point."

Officer Lay transported defendant to police headquarters and obtained permission from his shift commander to conduct a strip search. Police asked defendant to remove each article of clothing until he was in his underwear. Defendant then removed his underwear, revealing a translucent orange prescription pill bottle clenched between his legs. The bottle contained eight tablets, which police later identified as alprazolam.

Following the suppression hearing, the judge denied defendant's motion in a written opinion. The judge found Officer Lay had reasonable articulable suspicion that defendant committed two traffic violations, justifying the initial stop. He then determined Officer Lay had probable cause to arrest defendant for possession of a controlled substance, based on "the late hour of the night, the suspicious conduct of [d]efendant, the 'plain feel' of a prescription pill bottle, the odor of raw marijuana, and Officer Lay's training, experience, and expertise." Relying on N.J.S.A. 2A:161A-1,<sup>1</sup> he concluded the strip search was lawful under the search incident to arrest exception to the warrant requirement, finding "[d]efendant's arrest and search of his person were part of one uninterrupted transaction."

After he was sentenced, defendant filed this appeal. He presents the following point of argument:

IN THE ABSENCE OF A WARRANT OR A RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT, THE STRIP SEARCH OF DEFENDANT WAS UNLAWFUL, AND THE EVIDENCE SEIZED FROM HIS GROIN MUST BE SUPPRESSED. U.S. CONST. AMENDS. IV AND XIV; N.J. CONST. ART. 1 PAR 7.

## II.

In reviewing the denial of a suppression motion, we "must uphold the factual findings underlying the trial court's decision

---

<sup>1</sup> The judge cited N.J.S.A. 2A:161A-3 in his opinion but applied the language from N.J.S.A. 2A:161A-1.

so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014) (citing State v. Elders, 192 N.J. 224, 243 (2007)). However, we grant no special deference to the trial judge's "interpretation of the law . . . and the consequences that flow from established facts." Id. at 425 (citing State v. Gandhi, 201 N.J. 161, 176 (2010); Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Both the United States Constitution and the New Jersey Constitution guarantee an individual's right to be secure against unreasonable searches or seizures." State v. Minitee, 210 N.J. 307, 318 (2012) (citing U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7). A search or seizure undertaken without a warrant is "presumed to be invalid." Ibid. (citing State v. Cooke, 163 N.J. 657, 664 (2000)).

Nonetheless, the police may arrest a suspect in public without a warrant so long as probable cause exists to justify the arrest. State v. Shannon, 222 N.J. 576, 585 (2015), cert. denied, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1657, 194 L. Ed. 2d 800 (2016). "[A] police officer has probable cause to arrest a suspect when the officer possesses 'a well[-]grounded suspicion that a crime has been or is being committed.'" Ibid. (alterations in original) (quoting State v. Basil, 202 N.J. 570, 585 (2010)). "That well-grounded

suspicion should be based on the totality of the circumstances as viewed by 'an objectively reasonable police officer.'" Ibid. (quoting Basil, supra, 202 N.J. at 585).

However, "an encounter that begins with a valid arrest or investigative stop may lead to a seizure that will be suppressed because the officer has unreasonably expanded the permissible scope of an otherwise valid search." State v. Evans, 449 N.J. Super. 66, 80 (App. Div.), certif. granted, \_\_\_ N.J. \_\_\_ (2017). "The touchstone of the Fourth Amendment and Article I, [P]aragraph 7 of the New Jersey Constitution is reasonableness." State v. Watts, 223 N.J. 503, 514 (2015) (alteration in original) (quoting State v. Hathaway, 222 N.J. 453, 476 (2015)).

Defendant does not dispute the police lawfully stopped his vehicle because of his inoperative brake light and expired registration. See State v. Bernokeits, 423 N.J. Super. 365, 370 (App. Div. 2011) ("A motor vehicular violation, no matter how minor, justifies a stop without any reasonable suspicion that the motorist has committed a crime or other unlawful act."). Nor does he challenge his arrest, conceding police had probable cause to take him into custody based on the smell of marijuana emanating from his person and vehicle. See State v. Myers, 442 N.J. Super. 287, 297 (App. Div. 2015) ("[T]he smell of marijuana itself can

suffice to furnish probable cause that a criminal offense has been committed . . . ."), certif. denied, 224 N.J. 123 (2016).

Rather, defendant's sole point of contention is that the police acted unlawfully by subjecting him to a strip search without first obtaining a warrant. The parties agree the police conducted a strip search as defined by N.J.S.A. 2A:161A-3, thereby subjecting the encounter to the protections outlined in N.J.S.A. 2A:161A-1. See Evans, supra, 449 N.J. Super. at 80. "We have observed that this statute 'was adopted to provide greater protection than is afforded by the Fourth Amendment,' noting that 'a statute providing rights coextensive with constitutional protections would be superfluous.'" Id. at 81 (quoting State v. Hayes, 327 N.J. Super. 373, 381 (App. Div. 2000)).

N.J.S.A. 2A:161A-1 states:

A person who has been detained or arrested for commission of an offense other than a crime shall not be subjected to a strip search unless:

- a. The search is authorized by a warrant or consent;
- b. The search is based on probable cause that a weapon, controlled dangerous substance . . . or evidence of a crime will be found and a recognized exception to the warrant requirement exists; or
- c. The person is lawfully confined in a municipal detention facility or an adult county correctional facility and the search is based on a reasonable



suspicion that a weapon, controlled dangerous substance . . . or contraband, as defined by the Department of Corrections, will be found, and the search is authorized pursuant to regulations promulgated by the Commissioner of the Department of Corrections.

Because defendant did not consent to the strip search, nor was he confined in a detention or correctional facility, the only provision that could apply is subsection (b). However, the protections of subsection (b) have no effect unless we determine police arrested defendant "for commission of an offense other than a crime." Ibid. Our Criminal Code differentiates between "crimes," which are offenses of the first, second, third, or fourth degree, and "disorderly persons" offenses. See N.J.S.A. 2C:1-4.

Defendant argues the protections of N.J.S.A. 2A:161A-1(b) apply because police arrested him for possessing less than fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4), a disorderly persons offense. See State v. Harris, 384 N.J. Super. 29, 49 (App. Div.) ("[T]he strip search of defendant, who was arrested for the disorderly persons offense of marijuana possession, is prohibited unless supported by both probable cause and 'a recognized exception to the warrant requirement.'" (quoting N.J.S.A. 2A:161A-1(b))), certif. denied, 188 N.J. 357 (2006). Conversely, the State argues N.J.S.A. 2A:161A-1(b) is inapplicable because police also had probable cause to arrest defendant for unlawful possession of

prescription pills, N.J.S.A. 2C:35-10.5(e)(2), a crime of the fourth degree. The State asserts the plain feel of the pill bottle, the fact defendant attempted to hide it, his demeanor, and Officer Lay's experience established probable cause by a totality of the circumstances. See Shannon, supra, 222 N.J. at 585. The State stresses that Officer Lay's subjective intent to arrest defendant for marijuana possession is immaterial to the determination of probable cause. See State v. O'Neal, 190 N.J. 601, 613-14 (2007).

Having reviewed the suppression record, we reject the State's position. To convict a defendant under N.J.S.A. 2C:35-10.5(e)(2), the State must prove he possessed "a prescription legend drug . . . in an amount of five or more dosage units unless lawfully prescribed . . . by a licensed physician." Officer Lay's suspicion that the item in defendant's groin area was a prescription pill bottle does not establish probable cause defendant committed this offense. A suspect can store marijuana in a bottle, see State v. Miller, 342 N.J. Super. 474, 480 (App. Div. 2001), and would react as defendant did upon its discovery. As Officer Lay's testimony only established facts suggesting marijuana use, we find there was no "objectively reasonable" basis to arrest defendant for possession of prescription pills. See Shannon, supra, 222 N.J. at 585.

The State further argues that if N.J.S.A. 2A:161A-1(b) does apply, the strip search was justified because there was probable cause defendant possessed illicit prescript pills, and "a recognized exception to the warrant requirement exist[ed]." Ibid. The trial judge reached this conclusion on the warrant issue, finding police acted lawfully under the search incident to arrest exception. The State urges us to agree and further presents the exigent circumstances exception as an alternative justification for the search.

However, we have held that the search incident to arrest exception "may not be relied upon as the recognized exception to the warrant requirement to satisfy the second criteria of subsection 2A:161A-1(b)." Evans, supra, 449 N.J. Super. at 81 (citing Hayes, supra, 327 N.J. Super. at 378). In reaching this conclusion, we found because "the strip search statute's protections are triggered by an arrest[,] [a]n arrest alone . . . cannot be both the event invoking the protections as well as the event nullifying them." Ibid. (quoting Hayes, supra, 327 N.J. Super. at 378). We further concluded that the risk a defendant might destroy the evidence could not create an exigency justifying a warrantless search under N.J.S.A. 2A:161A-1(b), because "it would effectively nullify the statutory protection afforded to

persons detained or arrested for non-criminal offenses." Hayes, supra, 327 N.J. Super. at 378.

The State urges us to find Hayes distinguishable, contending the defendant in that case "was arrested for a non-criminal offense and probable cause that [the] defendant possessed criminal contraband did not develop until after [the] defendant was already searched and secured in the police vehicle," and "[n]o exigency existed because [the] defendant was already secured when probable cause arose." In Hayes, police arrested the defendant for an outstanding warrant and secured him in the patrol car, where he then attempted to place his hands down his pants. Id. at 376. Believing the defendant was reaching for drugs hidden in his pants, police conducted a strip search and discovered a bag containing cocaine. Id. at 376-77. As noted, we determined N.J.S.A. 2A:161-1(b) could not justify this search because "[a]n arrest alone . . . cannot be both the event invoking the protections as well as the event nullifying them." Id. at 378.

Despite the State's assertions, we find Hayes applies to the instant matter. The police only had probable cause to arrest defendant for marijuana possession, and upon doing so, triggered the protections of N.J.S.A. 2A:161A-1(b). That the probable cause arose before police secured defendant does not alter the outcome; the police could not use the search incident to arrest exception

to circumvent the protections that arose from defendant's arrest. Furthermore, exigency could not support the search once the police handcuffed and secured defendant. See Hayes, supra, 327 N.J. Super. at 378.

Finally, although not fully discussed by the State, our decision in Evans suggests that the "plain feel" exception to the warrant requirement might support a strip search under N.J.S.A. 2A:161A-1(b).<sup>2</sup> Evans, supra, 449 N.J. Super. at 83-86. The plain feel doctrine applies "when the officer conducting a lawful search 'feels an object whose contour or mass makes its identity immediately apparent.'" Id. at 85 (quoting Minnesota v. Dickerson, 508 U.S. 366, 375, 113 S. Ct. 2130, 2137, 124 L. Ed. 2d 334, 345 (1993); State v. Jackson, 276 N.J. Super. 626, 630-31 (App. Div. 1994)). "The officer's knowledge that the arrestee has concealed drugs on his person in the past may also contribute to the officer's immediate realization that the bulge he touched was drugs." Ibid.

However, as in Evans, we find this exception does not apply in the instant matter. Officer Lay's feeling of an object he believed to be a prescription pill bottle did not make it

---


<sup>2</sup> Because the Evans court found the record did not support application of the plain feel doctrine, the court did not make the ultimate determination whether this exception could justify a strip search under N.J.S.A. 2A:161A-1. Evans, supra, 449 N.J. Super. at 84 n.9.

"immediately apparent" that the bottle contained contraband. Moreover, although defendant had a prior arrest for marijuana possession, there was no evidence in the record he had previously concealed drugs on his person.

Therefore, because we conclude the police did not act reasonably in this matter, we reverse the order denying suppression and remand for dismissal of defendant's judgment of conviction.

Reversed and remanded. 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