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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-5096-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEFFREY SMITH,

Defendant-Appellant.

Submitted March 14, 2018 – Decided April 11, 2018

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
15-09-1243.

Joseph E. Krakora, Public Defender, attorney
for appellant (Stephen P. Hunter, Assistant
Deputy Public Defender, of counsel and on the
brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Sarah E. Ross, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

Defendant Jeffrey Smith appeals from his conviction for
fourth-degree possession of a false government document, N.J.S.A.

2C:21-2.1(d). Defendant entered a conditional plea after the denial of his motion to suppress. On appeal, defendant argues that the decision to deny the motion was erroneous. We affirm.

On September 8, 2015, defendant was indicted by a Hudson County Grand Jury and charged with fourth-degree obstruction of administration of law or other government function, N.J.S.A. 2C:29-1 (count one); fourth-degree unlawful theft or receipt of a credit card, N.J.S.A. 2C:21-6(c)(1) (count two); and fourth-degree possession of a false government document, N.J.S.A. 2C:21-2.1(d) (count three). Defendant filed a motion to suppress the evidence uncovered during the search of his person. At the conclusion of the testimonial hearing, the judge denied the motion in an oral decision.

Thereafter, defendant entered into a negotiated plea and was sentenced in accordance therewith to thirty days in the Hudson County Jail, plus additional fines and penalties. All other charges were dismissed. This appeal followed.

We derive the relevant facts from the motion hearing. On March 29, 2015, Lieutenant Robert Ryan, a seventeen-year veteran of the Bayonne Police Department, was working a security detail at a Shop Rite supermarket, which was also a liquor store. While working in this capacity, Ryan was working for the City of Bayonne as a contracted officer through Shop Rite to provide security and

was expected to patrol all departments of the store. On the night of the incident, Ryan was not in his police uniform, but rather in "off-duty plain clothes." On his person, Ryan carried his firearm, handcuffs, and police radio, which was clipped to his jeans pocket and was visible from the front.

At approximately 8 p.m., Ryan was called to the liquor department by a loss prevention officer. Upon entering, Ryan observed two black men, one with dreadlocks, at the counter, who were in the process of purchasing cases of "high-end liquor." As Ryan made eye contact with the men, they abandoned the purchase and hurriedly exited the store.

Premised upon his knowledge of recent incidents involving two men of the same description using fraudulent credit cards to purchase high-end liquor, Ryan became suspicious and followed the men outside. As he approached the men, Ryan asked them, "What's the story fellas? How come you're not finishing . . . making your purchase?" The men denied being in the store and denied that they were attempting to make a purchase. Subsequently, as Ryan called police headquarters to request back up and to inform them that he was going to conduct a field check, the two men walked away. Ryan followed the men and ordered that they stop by saying, "Police, stop, let's talk about what just happened in the store, the purchases you were trying to make." The men ignored his orders

and continued walking. A foot pursuit ensued, which resulted in the apprehension of one individual, later identified as defendant. The other individual, later identified as Joseph Basile, was apprehended by back-up officers. Both individuals were arrested. Following his arrest, defendant was taken to Bayonne Police headquarters for processing.

A search incident to arrest led to the recovery of a New York driver's license with the name William Price found in defendant's right shoe, as well as ten credit cards, also bearing the name William Price. A Massachusetts driver's license issued to defendant was also recovered from his wallet.

Defendant raises the following arguments on appeal:

POINT I

OFFICER RYAN, WHO WAS WORKING AS A SUPERMARKET SECURITY GUARD, LACKED PROBABLE CAUSE TO ARREST DEFENDANT FOR OBSTRUCTION BECAUSE RYAN WAS DRESSED IN PLAIN CLOTHES AND FAILED TO PRESENT A BADGE OR ANY OBJECTIVE EVIDENCE THAT HE WAS A POLICE OFFICER WHEN HE REQUESTED DEFENDANT TO STOP. THE DIRECT FRUITS OF THIS ILLEGAL ARREST SHOULD HAVE BEEN SUPPRESSED. U.S. CONST. AMEND. IV, XIV; N.J. CONST. ART. I, ¶ [SIC] 1, 7.

POINT II

ALTERNATIVELY, OFFICER RYAN LACKED REASONABLE SUSPICION FOR AN INVESTIGATORY STOP AND THE STATE FAILED TO ESTABLISH A SIGNIFICANT ATTENUATION BETWEEN THE UNCONSTITUTIONAL STOP AND THE SEIZURE OF EVIDENCE FOUND DURING THE SEARCH INCIDENT TO THE ARREST. STATE v.

WILLIAMS, 410 N.J. SUPER. 549 (APP. DIV. 2009). U.S. CONST. AMEND. IV, XIV; N.J. CONST. ART. I, ¶ [SIC] 1, 7.

Our Supreme Court has recited the standard of review applicable to an appellate court's consideration of a trial judge's fact-finding on a motion to suppress:

[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are "supported by sufficient credible evidence in the record." [State v. Elders, 386 N.J. Super. 208, 228 (App. Div. 2006)] (citing State v. Locurto, 157 N.J. 463, 474 (1999)); see also State v. Slockbower, 79 N.J. 1, 13 (1979) (concluding that "there was substantial credible evidence to support the findings of the motion judge that the . . . investigatory search [was] not based on probable cause"); State v. Alvarez, 238 N.J. Super. 560, 562-64 (App. Div. 1990) (stating that standard of review on appeal from motion to suppress is whether "the findings made by the judge could reasonably have been reached on sufficient credible evidence present in the record" (citing State v. Johnson, 42 N.J. 146, 164 (1964))).

An appellate court "should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Johnson, 42 N.J. at 161. An appellate court should not disturb the trial court's findings merely because "it might have reached a different conclusion were it the trial tribunal" or because "the trial court decided all evidence or inference conflicts in favor of one side" in a close case. Id. at 162. A trial court's findings should be disturbed only if they are so clearly mistaken

"that the interests of justice demand intervention and correction." Ibid. In those circumstances solely should an appellate court "appraise the record as if it were deciding the matter at inception and make its own findings and conclusions." Ibid.

[State v. Elders, 192 N.J. 224, 243-44 (2007).]

An appellate court need not give deference to a trial judge's interpretation of the law. State v. Vargas, 213 N.J. 301, 327 (2013); State v. Gandhi, 201 N.J. 161, 176 (2010); State v. Handy, 412 N.J. Super. 492, 498 (App. Div. 2010) (stating that our review of the judge's legal conclusions is plenary), aff'd, 206 N.J. 39 (2011). Legal issues are reviewed de novo. Ibid. "A trial court's interpretation of the law . . . and the consequences that flow from established facts are not entitled to any special deference." State v. Lamb, 218 N.J. 300, 313 (2014).

The judge found Ryan had a reasonable and articulable suspicion to believe criminal activity was afoot and therefore was justified in ordering defendant to stop. The judge further found that since defendant did not follow Ryan's orders to stop, they obstructed his performance of an official function, giving Ryan probable cause to arrest. The judge also found that Ryan, while attempting to conduct an investigatory stop, was performing an official governmental function in good faith based upon reasonable

suspicion. Predicated upon those findings, the judge held the search incident to arrest was justifiable.

The Fourth Amendment to the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution guarantee the right "of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures[.]" U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. The Fourth Amendment and Article 1, paragraph 7 of the New Jersey Constitution both "require[] the approval of an impartial judicial officer based on probable cause before most searches may be undertaken." State v. Patino, 83 N.J. 1, 7 (1980).

Warrantless searches are presumed invalid. State v. Gamble, 218 N.J. 412, 425 (2014); State v. Cooke, 163 N.J. 657, 664 (2000). "Any warrantless search is prima facie invalid, and the invalidity may be overcome only if the search falls within one of the specific exceptions created by the United States Supreme Court." State v. Hill, 115 N.J. 169, 173 (1989) (citing Patino, 83 N.J. at 7). The State carries the burden of proving the existence of an exception by a preponderance of the evidence. State v. Amelio, 197 N.J. 207, 211 (2008), cert. denied, 556 U.S. 1237, 129 S. Ct. 2402, 173 L. Ed. 2d 1297 (2009).

Defendant argues that the evidence recovered during the search should be suppressed because Ryan did not have a probable cause to make the warrantless arrest. We disagree.

A warrantless arrest can only be justified by probable cause. Probable cause exists where the facts and circumstances within an officer's knowledge are "sufficient in themselves" to warrant a person of reasonable caution in believing that a crime has been or is being committed. State v. Moore, 181 N.J. 40, 46 (2004).

A person commits crime of obstruction if he or she purposely obstructs "the administration of law or other governmental function" or prevents a "public servant" from performing an "official function." N.J.S.A. 2C:29-1. "Purposely" is defined as follows:

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist.

[N.J.S.A. 2C:2-2b(1).]

Thus, to commit the crime of obstruction, a person has an awareness that a public servant is performing a governmental function and it is the person's conscious object to interfere with that governmental function.

Our Supreme Court examined the obstruction statute in State v. Crawley, 187 N.J. 440, 451-52 (2006), and found that a person does not have the right to self-help and "must obey [an] . . . officer's order to stop and may not take flight without violating N.J.S.A. 2C:29-1." The Court made clear that the officer must be "acting in good faith and under the color of his authority. . . ." Id. at 451.

In Crawley, there was no issue as to defendant's knowledge of whether an authorized police officer was engaged in the performance of one's duties. Here, defendant claims that he did not know that Ryan was a police officer. In refutation of that claim, Ryan's uncontroverted testimony was that he announced his status as a police officer when he requested defendant and Basile to stop.

As the judge found, and we agree, that at the time Ryan made the request of defendant to stop, he was acting in good faith and under the color of his authority. Ryan's testimony relative to the basis for his suspicion of criminal activity i.e., prior incidents of similar fraudulent activity, and the conduct of defendant in abandoning the purchase was also uncontroverted. When Ryan's suspicion was coupled with defendant's failure to stop and his flight, we conclude there was probable cause to arrest

defendant and the search conducted incident to that arrest was not constitutionally infirm.

In sum, we hold the judge's findings were supported by sufficient and credible evidence in the record and her conclusions of law that flowed from those findings were unassailable. As such, we discern no basis for error.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION