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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0033-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LEANDER WILLIAMS,  
a/k/a LEELEE WILLIAMS,  
and SHALIK WILLIAMS,

Defendant-Appellant.

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Submitted March 1, 2022 – Decided April 21, 2022

Before Judges Fisher and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 16-11-1717, 16-12-1832 and 18-01-0097.

Joseph E. Krakora, Public Defender, attorney for appellant (John P. Flynn, Assistant Deputy Public Defender, of counsel and on the briefs).

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Joie D. Piderit, Assistant Prosecutor, of counsel and on the brief).

## PER CURIAM

New Brunswick police arrested defendant after they witnessed him with a group of men playing a game of dice and exchanging money with others on the sidewalk in violation of New Brunswick municipal ordinance § 9.04.010. A subsequent search of defendant revealed he had 102 bags of cocaine hidden down the front of his pants. The court denied defendant's motion to suppress the narcotics, finding it was a lawful search incident to arrest. Defendant pleaded guilty and was sentenced to eight years' imprisonment with four years of parole ineligibility.

We conclude that the arrest and subsequent search were not valid under N.J.S.A. 40A:14-152, because the violation of the ordinance was not a disorderly persons offense or a breach of peace. However, the State did raise an alternative argument for the admission of the evidence: that police lawfully seized the narcotics under the plain view exception. Because the trial court did not consider that argument, we vacate the order of suppression and remand for the court to consider whether the factual record permits the finding of a lawful search and seizure under an alternate basis.

## I.

We derive our facts from evidence elicited during the suppression hearing. New Brunswick Detective Brandt Gregus received information from a confidential informant that defendant was distributing narcotics at a specific location from "a bag attached to his belt." Gregus drove to the address in an unmarked vehicle wearing plain clothes. When he arrived, he saw a group of men, including defendant with whom he was familiar. Gregus parked his car and surveilled the group for ten to fifteen minutes. He testified he saw the group illegally gambling—playing a game of dice. Defendant was collecting money from the men. Gregus did not see any drug transactions.

Gregus called for backup, and after other officers arrived, they approached the group. When the men began to walk away, Gregus told them to stop and asked who had the dice. All of the men raised their hands, showing they were not holding the dice. When defendant raised his arms, Gregus stated he saw the top of a plastic bag tied to defendant's belt, with the remainder of the bag "sticking into his pants."<sup>1</sup> Gregus said it was "common for drug dealers to . . . conceal drugs inside their pants."

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<sup>1</sup> Defendant described the bag tied to his belt as a "sandwich baggie."

Gregus and another officer walked defendant to a nearby car. Gregus testified that he stuck his finger under the bag and "plop[ped]" it out. He denied putting his hand into defendant's pants. Gregus said he was able to put his fingers under the knot of the bag, which was still tied to defendant's belt, and pull it out. At that point, the detective said the bag "was still connected to [defendant's] belt" and Gregus "was able to see that it contained a significant amount of bags of crack cocaine." The bag contained 102 smaller bags of crack cocaine.

The search also uncovered money in defendant's front pocket. Only defendant was issued a summons for illegal gambling. The other men were released.

## II.

Defendant later moved to suppress the narcotics, contending they were illegally seized after an invalid arrest. The State opposed the motion, asserting the search was incident to a valid arrest and, in the alternative, the narcotics were in plain view, therefore justifying their seizure without a warrant. During the ensuing hearing, in addition to Gregus, the court heard from two defense witnesses. The two men testified they were present at the time of this incident and saw police put their hands down defendant's pants and pull something out.

In its February 11, 2019 order denying the motion to suppress, the trial court found Gregus was credible and the defense witnesses were not. The judge stated: "Detective Gregus observed the defendant violating a municipal ordinance and was within his authority to arrest the defendant and search his person" under N.J.S.A. 40A:14-152. Because the court found the search was incident to a lawful arrest, it did not consider the plain view exception.

### III.

Defendant presents the following issues for our consideration:

I. THE SUPPRESSION MOTION SHOULD HAVE BEEN GRANTED BECAUSE THE SEARCH OF WILLIAMS WAS NEITHER A VALID SEARCH INCIDENT TO ARREST NOR A VALID PLAIN-VIEW SEARCH.

A. As a Matter of law, the Detective Could not Conduct a Custodial Arrest for a Violation of a Municipal Ordinance That did not Involve a Breach of the Peace.

B. The State Failed to Establish Probable Cause That Williams Violated a Municipal Ordinance.

C. The Detective Exceeded the Permissible Scope of a Search Incident to Arrest by Reaching Down Williams's Pants on a Public Street in View of Other People.

D. The Plain-View Exception does not Apply Because the Detective Lacked Probable Cause That the Partially Visible Bag Contained Drugs.

II. RESENTENCING IS WARRANTED BECAUSE  
THE TRIAL COURT MISTAKENLY BELIEVED IT  
WAS BOUND BY THE PLEA AGREEMENT AND  
FAILED TO MEANINGFULLY WEIGH THE  
AGGRAVATING AND MITIGATING FACTORS.

A.

In our review of an order granting or denying a motion to suppress evidence, we uphold the factual findings underlying the trial court's decision if they are "supported by sufficient credible evidence in the record." State v. Scriven, 226 N.J. 20, 40 (2016). In addition, we "defer to trial courts' credibility findings that are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). Such deference is given to credibility findings because the trial judge had the "opportunity to evaluate the credibility of the witnesses." State v. Hubbard, 222 N.J. 249, 269 (2015) (citation omitted).

The judge's findings should be overturned "only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, we owe no deference to the trial court's conclusions of law. Instead, our review is de novo. State v. Watts, 223 N.J. 503, 516 (2015).

Defendant contends the search incident to arrest was unconstitutional because: (1) an officer cannot conduct a warrantless, custodial search of an individual for violating a municipal ordinance if that individual has not breached the peace; (2) there was no probable cause that defendant violated the ordinance; (3) the detective exceeded the scope of his search incident to arrest when reaching into defendant's pants; and (4) the detective lacked probable cause that the bag in defendant's waistband contained drugs, therefore the plain-view doctrine does not justify the search.

B.

Law enforcement was not authorized under the controlling statute to arrest defendant for a breach of the municipal ordinance forbidding gambling. Under N.J.S.A. 40A:14-152, a police officer "shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace." Under the statute's plain language, a police officer may only arrest an individual committing a disorderly persons offense or for a breach of peace.

Defendant was only stopped for violating a municipal ordinance. We have stated that the violation of a municipal ordinance is not a disorderly persons offense. Marion v. Borough of Manasquan, 231 N.J. Super. 320, 330 (App. Div.

1989); see also N.J.S.A. 2C:1-4(b)(1) (stating a disorderly persons offense is only an offense as so defined in the New Jersey Criminal Code or by statute). Moreover, Gregus testified that defendant was not charged with a disorderly persons offense. Therefore, defendant could only be arrested for a breach of peace.

In State v. Hurtado, 113 N.J.1 (1988), rev'g on dissent, 219 N.J. Super. 12 (App. Div. 1987), the Supreme Court reversed this court's decision and adopted the dissenting judge's opinion that found police had no authority to arrest the defendant for violating a municipal ordinance prohibiting littering. 113 N.J. at 2 (citing 219 N.J. Super. at 23-28 (Skillman, J., dissenting)).

Because the defendant was only cited for violating a municipal ordinance, Judge Skillman stated defendant could only be arrested for a breach of the peace, and littering was not such an offense. Id. at 25. Referring to Wharton's Criminal Law, the judge cited examples of circumstances rising to a breach of the peace, such as "public brawling," "being intoxicated and yelling on a public street," "discharging a weapon on a public street," and "entering the dwelling house of another with weapons in such manner as to cause terror and alarm to the occupants." Ibid. (quoting 4 Wharton's Criminal Law § 522 at 176-77 (14th ed. 1981)). The judge stated that littering "had a much lesser impact on public order



than any of [the] illustrations," and "cannot reasonably be found to have constituted a 'breach of the peace.'" Ibid. Therefore, N.J.S.A. 40A:14-152 did not authorize the warrantless arrest and rendered the subsequent search invalid. Ibid.

In reviewing the testimony presented during the suppression hearing, there was no evidence that rises to the level of the circumstances described by Judge Skillman to warrant a breach of the peace. Detective Gregus did not arrest defendant because he was breaching the peace. Gregus merely observed several men rolling dice. Defendant was standing on the edge of the group collecting money. Gregus conceded he did not see any drug transactions.

The validity of the search turns on the validity of the arrest. Because it was unlawful to arrest defendant under N.J.S.A. 40A:14-152, the ensuing warrantless search was not justified as a search incident to a lawful arrest.

### C.

The State also presented an alternative argument to uphold the search and seizure of the evidence—that the plain view exception to the warrant requirement was satisfied because Gregus saw the plastic baggie tied to defendant's belt when he raised his hands. The trial court did not consider this argument because it found the search was incident to a lawful arrest. Therefore,

we remand for the court to consider whether the factual record permits admission of the narcotics evidence under any other legal theory.

IV.

Because we are remanding for further proceedings regarding the suppression motion, we do not address defendant's contentions regarding his sentencing. Defendant may raise those arguments again in a future appeal.

The February 11, 2019 order is vacated. We remand for further proceedings in accordance with this opinion. 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