

**NOT FOR PUBLICATION WITHOUT THE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-0804-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES I. RAMSEY,

Defendant-Appellant.

Argued February 10, 2022 – Decided April 5, 2022

Before Judges Alvarez, Mawla, and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment Nos. 20-03-0175 and 20-03-0186.

Margaret McLane, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Margaret Mclane, of counsel and on the briefs).

Patrick Harty, Assistant Prosecutor, argued the cause for respondent (Angelo J. Onofri, Mercer County Prosecutor, attorney; Laura Sunyak, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant James Ramsey appeals from two October 29, 2020 convictions entered after separate guilty pleas for second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1), based on a December 10, 2019 incident, and for third-degree possession of a controlled dangerous substance (CDS) with the intent to distribute, N.J.S.A. 2C:35-5(a)(1), based on a July 19, 2019 arrest.¹ We affirm.

We discern the following facts from the record. On December 10, 2019, at approximately 8:57 p.m., Detective Jeffrey Donaire and his partners, Detectives Jimenez and Quinones, were driving in a marked police vehicle on West State Street towards Calhoun Street in the city of Trenton. As they were driving toward Calhoun Street, Donaire and his partners observed defendant and another man walking toward them. When the men noticed the police presence, they began scanning the area and then crouched behind parked vehicles to hide. Donaire thought the behavior was suspicious, so he made a U-turn and went

¹ On appeal, defendant is only challenging the judge's decision on the motion to suppress a handgun and ecstasy found on December 10, 2019. Because the plea agreement included the events of December 10, 2019, and of July 19, 2019, and the judge sentenced defendant on both indictments, with the sentences running concurrently, defendant has appealed both. Nevertheless, the events of July 19, 2019, are not relevant to this appeal.

back toward where the men were hiding. When the police turned around, the men began to walk away. Donaire and his partners, wearing uniforms, exited their vehicle and approached the men. Defendant then made a motion towards his right pocket, as if to shield his body away from Donaire. Donaire thought defendant was reaching for a weapon and ordered defendant to place his hands on a nearby fence. Defendant complied. The other man voluntarily put his hands on the fence.

As Donaire approached defendant, he smelled marijuana. Based on that smell, Donaire searched defendant's right pocket and found a small amount of marijuana and one pill of ecstasy. Immediately afterward, Jimenez handcuffed defendant, and Donaire searched defendant's book bag and found a .38 special revolver.

Following defendant's indictment for the events of December 10, 2019, defendant moved to suppress the gun and ecstasy. At the July 22, 2020 suppression hearing, Donaire testified on behalf of the State. On the date of the incident, Donaire had worked for the Trenton Police Department for approximately thirteen years and had spent the last six years with the Street Crimes Unit. During his tenure with the unit, Donaire investigated thousands of

cases. On cross-examination, Donaire stated there was no motor vehicle recordings or body camera footage of the incident.

On August 31, 2020, based on Donaire's credible testimony, the judge denied defendant's motion in an order and oral opinion. On September 18, 2020, defendant pleaded guilty to second-degree unlawful possession of a handgun, and third-degree possession of CDS (heroin and fentanyl) with the intent to distribute.

On October 26, 2020, the judge sentenced defendant on both indictments. Pursuant to the plea agreement, he sentenced defendant to five years' imprisonment with a three-and-one-half year period of parole ineligibility on the handgun charge and five years' imprisonment with a two-and-one-half year period of parole ineligibility on the CDS charge. The sentences ran concurrently. The judge also imposed fines and ordered defendant to submit to a DNA test. Finally, he awarded jail credits and dismissed the remaining counts. This appeal followed.

On appeal, defendant presents the following arguments for our consideration:

POINT I

POLICE LACKED REASONABLE SUSPICION TO
STOP DEFENDANT AND WERE NOT

AUTHORIZED TO MAKE A CUSTODIAL ARREST
OR SEARCH DEFENDANT INCIDENT TO THAT
ARREST.

A. There Was No Reasonable Suspicion
To Stop Defendant.

B. Even If The Smell Of Marijuana
Provided Probable Cause That Defendant
Committed A Crime, He Should Have
Been Issued A Summons And Released.
Thus, The Custodial Arrest And Search
Incident To That Arrest Were Illegal.

In reviewing a motion to suppress, we defer to the factual and credibility findings of the trial court, "so long as those findings are supported by sufficient credible evidence in the record." State v. Coles, 218 N.J. 322, 342 (2014) (quoting State v. Hinton, 216 N.J. 211, 228 (2013)). Deference is afforded "because the 'findings of the trial judge . . . are substantially influenced by his [or her] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J. 154, 166 (2015) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). "An appellate court should disregard those findings only when a trial court's findings of fact are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). The legal conclusions of the trial court "are reviewed de novo." Id. at 263.

With these guiding principles in mind, we reject defendant's arguments and affirm, substantially for the reasons set forth in the motion judge's oral decision. A police officer may lawfully detain someone to conduct an investigatory stop without a warrant, and on less than probable cause. Terry v. Ohio, 392 U.S. 1, 21-22 (1968); State v. Stovall, 170 N.J. 346, 356 (2002). A warrantless investigative stop is valid when an "officer observes unusual conduct which leads [the officer] reasonably to conclude in light of his [or her] experience that criminal activity may be afoot." Terry, 392 U.S. at 30. The stop must be "based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity." State v. Pineiro, 181 N.J. 13, 20 (2004) (quoting State v. Nishina, 175 N.J. 502, 511 (2003)).

We "look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing" by the detained individual. United States v. Arvizu, 534 U.S. 266, 273 (2002). In undertaking this evaluation, we "give weight to 'the officer's knowledge and experience' as well as 'rational inferences that could be drawn from the facts objectively and reasonably viewed in light of the officer's

expertise.'" State v. Richards, 351 N.J. Super. 289, 299-300 (App. Div. 2002) (quoting State v. Arthur, 149 N.J. 1, 10 (1997)).

In this case, the judge's conclusion that Donaire had reasonable suspicion to stop defendant is well-supported by the record. Donaire, an experienced officer who the judge found credible, thought defendant's actions of scanning the area and crouching behind parked vehicles were suspicious and feared defendant was reaching for a weapon after making a motion towards his right pocket. While flight or furtive gestures alone are not sufficient to provide reasonable suspicion for a stop, see State v. Nyema, ___ N.J. ___, ___ (2022) (slip op. at 26-27); State v. Rosario, 229 N.J. 263, 277 (2017); State v. Tucker, 136 N.J. 158, 168-69 (1994), defendant's actions taken together gave rise to Donaire's reasonable suspicion of criminal activity. See State v. Lund, 119 N.J. 35, 48 (1990); Nishina, 175 N.J. at 511. The judge did not err in finding that "based upon [defendant's] movement and the surrounding circumstances, . . . Donaire had articulable facts warranting his heightened caution."

We reject defendant's argument that Donaire wrongfully searched defendant, which hinges on a finding that the initial investigatory stop was unlawful. Having "form[ed] a reasonable and articulable suspicion to justify an investigatory stop," the officer's pat-down to ensure defendant was unarmed was

permissible. See State v. Gamble, 218 N.J. 412, 430 (2014) (citing Terry, 392 U.S. at 30-31). Reasonable suspicion ripened into probable cause when the officer detected the smell of marijuana as he approached defendant. "[T]he smell of marijuana itself constitutes probable cause 'that a criminal offense ha[s] been committed and that additional contraband might be present.'" State v. Walker, 213 N.J. 281, 290 (2013) (second alteration in original) (quoting Nishina, 175 N.J. at 516-17). Accordingly, officers may "conduct a warrantless search of the persons in the immediate area from where the smell has emanated." State v. Vanderveer, 285 N.J. Super. 475, 481 (App. Div. 1995).

Here, Donaire had probable cause to search defendant. Donaire testified that as he approached defendant, he smelled marijuana. Once Donaire smelled marijuana upon approaching defendant, Donaire had probable cause to believe that defendant was in possession of marijuana in violation of N.J.S.A. 2C:35-10(a)(4) and that other contraband might be present. See Walker, 213 N.J. at 290. The smell and resulting probable cause then allowed Donaire to conduct a warrantless search of defendant, specifically defendant's right pocket where Donaire found a small amount of marijuana and one pill of ecstasy. see Vanderveer, 285 N.J. Super. at 481. The judge did not err in finding that Donaire conducted a valid search.

Because Donaire found marijuana and ecstasy in defendant's pocket, he had probable cause to arrest defendant and perform a search incident to the arrest. See State v. O'Neal, 190 N.J. 601, 613 (2007) (finding an officer's first-hand observation of a criminal act constitutes probable cause for the purposes of arresting the offender). Upon making an arrest, an officer may search the person incident to arrest provided the search does not exceed the arrestee's person and the area "within his immediate control." Chimel v. California, 395 U.S. 752, 763 (1969). Immediately upon arresting defendant, Donaire searched defendant's book bag, which was on his back, and found the gun. The judge did not err in finding that Donaire conducted a valid search incident to arrest.

Defendant's argument that he should have been issued a summons and released lacks sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(2); see also R. 3:4-1 (prescribing the officer's obligations following arrest as well as the required post-arrest procedures).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION