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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-0692-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SCHYLER A. MAY a/k/a
SCHYLER ANTHONY MAY,

Defendant-Appellant.

Submitted April 3, 2017 - Decided April 11, 2017

Before Judges Haas and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment No. 13-
09-0796.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kevin G. Byrnes, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Ian C. Kennedy,
Deputy Attorney General, of counsel and on the
brief).

PER CURIAM

After the trial judge denied his motion to suppress a handgun seized from a motel room, defendant Schyler May pled guilty to second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-

5(d). In accordance with the negotiated plea, the judge sentenced defendant to five years in prison, subject to a three-year period of parole ineligibility. The judge also assessed appropriate fines and penalties.

On appeal, defendant raises the following contentions:

THE DEFENDANT'S RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AS GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS WAS VIOLATED BY THE WARRANTLESS ENTRY INTO DEFENDANT'S HOTEL ROOM.

A. THE STATE FAILED TO MEET ITS BURDEN OF PROOF WITH CREDIBLE EVIDENCE.

B. EVEN IF THE POLICE STORY IS ACCEPTED AS CREDIBLE[,] THE EVIDENCE MUST STILL BE SUPPRESSED BECAUSE THE PO[L]ICE ENTERED THE ROOM WITHOUT A WARRANT BASED ON AN EXIGENCY THEY CREATED.

After reviewing the record in light of the contentions advanced on appeal, we affirm.

We derive the following facts from the evidentiary hearing conducted by the trial judge. On March 2, 2013, Officer Rick Bachman was on routine patrol. At approximately 9:00 p.m., the officer received a dispatch that a pizza delivery person had called the police to report that when he was making a delivery to someone in Room 21 at a local motel, he saw a handgun on the bed when the occupants opened the door.

Officer Bachman went to the motel to investigate. When Officer Bachman got there, he was met by other officers, who

accompanied him to Room 21. Officer Bachman testified that he knocked on the door and "a female opened the door." The officer stated that the woman opened the door "a quarter of the way[,]" which he estimated to be about "two feet."

Officer Bachman looked through the opening into the room and saw a man sitting on a bed with "[a] silver handgun in front of him." The man, later identified as defendant, "reached for the handgun and stuck it underneath him." At that point, Officer Bachman and the other officers entered the room. Officer Bachman ordered defendant to show his hands. After defendant was secured, Officer Bachman found the handgun underneath him. The weapon "had two rounds in the magazine[.]"

Defendant also testified at the hearing. According to defendant, his girlfriend answered the door when the pizza delivery person arrived. Defendant asserted that he was sitting on the bed with the gun between his legs and, therefore, the delivery person could not have seen it.

Defendant testified that less than ten minutes later, the police arrived and knocked on the door. Defendant stated that his girlfriend had just gotten out of the Jacuzzi and was wearing a towel. Defendant claimed that his girlfriend only opened the door two inches and then five officers "[c]ame straight through the door." Defendant testified that the gun was under his leg and was

not visible to the officers when they entered the room. Defendant asserted that the officers told him to move to his side and, when he did so, they saw the handgun.

At the conclusion of the hearing, the trial judge denied defendant's motion to suppress the handgun that Officer Bachman seized from the bed. In a thorough oral opinion, the judge specifically found that Officer Bachman's testimony was credible, while defendant's account was not. Because Officer Bachman could see the handgun in plain view on the bed once defendant's girlfriend opened the door, the judge concluded that the officer properly seized it. This appeal followed.

On appeal, defendant argues that the trial judge erred by denying his motion to suppress the handgun seized from the motel room. We disagree.

Our review of a trial judge's decision on a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). In reviewing a motion to suppress evidence, we must uphold the judge's factual findings, "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quoting Robinson, supra, 200 N.J. at 15). Additionally, we defer to a trial judge's findings that are "substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case,

which a reviewing court cannot enjoy." Ibid. (alteration in original) (quoting Robinson, supra, 200 N.J. at 15). We do not, however, defer to a trial judge's legal conclusions, which we review de novo. Ibid.

Generally, in order for a search or seizure to be constitutionally permissible, a warrant must first be obtained, based on probable cause. State v. Maryland, 167 N.J. 471, 482 (2001). This requirement springs from the Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution, which protect citizens against unreasonable searches and seizures. Rockford, supra, 213 N.J. at 440-41.

A warrantless search is presumed invalid unless it falls within a recognized exception. State v. Witt, 223 N.J. 409, 422 (2015). Nonetheless, a balance must be maintained between "individual freedom from police interference and the legitimate and reasonable needs of law enforcement." State v. Coles, 218 N.J. 322, 343 (2014). The State bears the burden, by a preponderance of the evidence, to establish that a warrantless search or seizure of evidence was justified in light of the totality of the circumstances. State v. Mann, 203 N.J. 328, 337-38 (2010).

The State met its burden in this case and the trial judge's decision to deny the motion to suppress was entirely in accord

with the principles set forth in State v. Stanton, 265 N.J. Super. 383, 386 (App. Div. 1993). In that case, the police received a call from an anonymous informant who advised that narcotics were being sold from a certain motel room. Id. at 384. The informant also said that there were weapons in the room. Ibid. That evening, several officers went to the motel to investigate the tip. Id. at 385. One of the officers knocked on the door and identified himself as a police officer. Ibid. A person in the room pulled back a curtain at the window and, from the hallway, the officer observed a plastic bag containing a white powdery substance, which the officer recognized as cocaine. Ibid. The other officers were summoned to the room and they seized the drugs. Ibid.

In Stanton, we held that the officer's entry into the motel room was the result of a reasonable police investigation. Id. at 386. We noted that the information provided to the police was not adequate to support the issuance of a search warrant. Ibid. However, we added that there was

nothing constitutionally offensive in the decision of the police to proceed to the scene and investigate. Indeed, the officers would have been derelict in their duty had they failed to do so. We also perceive nothing unreasonable in the officers' decision to knock on the motel room door and identify themselves. Whether or not this conduct was intended to detect criminal activity, it was not unreasonable or inconsistent with Fourth Amendment principles. We assume that the police routinely respond to complaints of

criminal conduct by proceeding to the scene, announcing their presence and making reasonable inquiries. That is their job. We know of no constitutional prohibition barring such conduct.

[Ibid.]

The trial judge's decision in this case was also consistent with our decision in State v. Padilla, 321 N.J. Super. 96 (App. Div.), certif. denied, 162 N.J. 198 (1999). There, the police received an anonymous tip that a person was seen entering a motel room while carrying a handgun. Id. at 102-03. The police went to the motel and knocked on the door. Id. at 103. One of the occupants opened the door and the police entered. Ibid. An officer observed cash on top of a bag. Id. at 104. The officer lifted the bag and found ammunition. Ibid. He also observed the handle and hammer of what appeared to be a gun. Ibid. The officer picked up the gun and saw that it was loaded and cocked. Ibid.

In Padilla, we upheld the denial of the defendant's motion to suppress the evidence found in the motel room. Id. at 107-10. We noted that the police went to the motel room, not to conduct a search, but to investigate an anonymous tip. Id. at 107. We stated that, while the anonymous caller did not give the police sufficient information for the issuance of a search warrant, "the police had the right, if not the obligation, to proceed to the

scene in order to investigate the report that a person with a gun was in the motel room." Ibid.

We added that, once inside the room, the officers "acted reasonably in making visual observations to assure themselves that no weapons were present or that none of the occupants reached for a weapon." Id. at 108. We held that the items in the room "were properly seized under the plain view exception to the search warrant requirement." Ibid.

Applying these principles here, the trial judge correctly denied defendant's motion to suppress the handgun. Officer Bachman properly went to Room 21 of the motel in response to the report he received that a man had a handgun inside that room. Stanton, supra, 265 N.J. Super. at 386. The officer's presence outside the door of the room was therefore constitutionally permissible and it was that lawful presence that led to the officer's plain view observation of the handgun on the bed when defendant's girlfriend opened the door. Padilla, supra, 321 N.J. Super. at 108.


As our Supreme Court recently iterated, the plain view doctrine allows seizures without a warrant so long as an officer is "lawfully . . . in the area where he observed and seized the incriminating item or contraband, and it [is] immediately apparent that the seized item is evidence of a crime." State v. Gonzales,

227 N.J. 77, 101 (2016). Under these circumstances, the seizure of defendant's handgun from the motel room bed was unimpeachable.

Finally, defendant contends that the trial judge erred by finding Officer Bachman's testimony to be more credible than his own. However, "[d]ue deference must be given to the judge's assessment of credibility since he heard the case, saw and observed the witnesses, heard them testify, and had the best opportunity to assess their credibility." Padilla, supra, 321 N.J. Super. at 107 (citing Gallo v. Gallo, 67 N.J. Super. 1, 5 (App. Div. 1961)). We defer to the judge's findings of fact in this case, including those concerning credibility, because they "are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007) (citing State v. Locurto, 157 N.J. 463, 474 (1999)).

Affirmed.

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


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