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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-1774-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MUKHRAN UMSTEAD,

Defendant-Appellant.

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Submitted November 30, 2017 – Decided December 14, 2017

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment No. 14-  
07-1861.

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

Robert D. Laurino, Acting Essex Prosecutor,  
attorney for respondent (Lucille M. Rosano,  
Special Deputy Attorney General/Acting  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

A grand jury returned a five-count indictment charging  
defendant and his co-defendant, Walter Johnson, with second-degree

conspiracy, N.J.S.A. 2C:5-2 (count one); third-degree possession of heroin, N.J.S.A. 2C:35-10(a) (count two); third-degree possession of heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and (b)(3) (count three); third-degree possession of heroin with intent to distribute within 1000 feet of school property, N.J.S.A. 2C:35-7(a) (count four); and second-degree possession of heroin within 500 feet of a public housing facility, public park, or public building, N.J.S.A. 2C:35-7.1(a) (count five).

Following an evidentiary hearing, the trial judge denied defendant's motion to suppress the heroin the police seized from him in a search incident to his arrest. The jury subsequently convicted defendant on all counts of the indictment.

At sentencing, the judge merged counts one through three into counts four and five. The judge sentenced defendant to five years in prison with a three-year period of parole ineligibility on count five, and to a concurrent five-year term with a thirty-six-month period of parole ineligibility on count four. This appeal followed.

On appeal, defendant raises the following contentions:

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE FOUND DURING A WARRANTLESS SEARCH OF HIS PERSON.

A. The Judge's Finding of Reasonable Suspicion Did Not Support His Conclusion That The Warrantless Search of [Defendant's] Person Was Valid.

B. The Warrantless Search of [Defendant's] Person Was Not Incident To A Lawful Arrest Because, As The Trial Court Observed, The Detectives Did Not Have Probable Cause To Believe That [Defendant] Committed A Narcotics Offense Before They Discovered Drugs In His Pocket.

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

At the evidentiary hearing, Detective Stanley Garns testified that he and two other officers were conducting an undercover surveillance of a street corner in a "high narcotic area" of Newark. The officers were in plain clothes and were sitting in an unmarked vehicle that was parked about five or six houses away from the corner. One of the other officers used binoculars to watch the corner.

At approximately 10:40 a.m., Detective Garns saw two men, later identified as defendant and Johnson, standing on the corner. A woman approached and spoke to Johnson. Detective Garns saw Johnson reach into his pocket, retrieve an item, hand it to the woman, and receive paper currency in exchange. The woman then walked away as Johnson put the money into his pocket.

Johnson next handed defendant a clear plastic bag, which defendant "placed . . . in his jacket pocket." After he did so, Johnson walked a short distance up the street and away from the corner.

A man then approached defendant and spoke to him. In response, defendant reached into his jacket pocket, took an item out of the plastic bag, handed it to the man, received paper currency in return, and placed the money in his pocket. After completing the exchange, the man left the area.

Detective Garns testified that the police believed they had witnessed two illegal drug transactions and they moved in to arrest defendant and Johnson. They drove up to the corner, got out of the car, identified themselves, and detained the two men. One of the other officers reached into defendant's pocket and retrieved the clear plastic bag. It contained 250 small glassine envelopes of heroin. The officers then placed defendant and Johnson under arrest. Detective Garns conducted a further search of defendant and found \$47 on his person.

Following oral argument, the trial judge rendered an oral opinion denying defendant's motion to suppress the heroin the police seized from him. The judge found that based on the facts the State established at the hearing, the action of the police "in searching and arresting [defendant and Johnson] . . . comport[ed]

with the mandate . . . of both the Federal Constitution and the . . . New Jersey Constitution."<sup>1</sup> This appeal followed.

On appeal, defendant argues that the trial judge erred by denying his motion to suppress the heroin seized from him. 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, 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, 200 N.J. at 15). We do not, however, defer to a trial judge's legal conclusions, which we review de novo. Ibid.

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<sup>1</sup> During oral argument, the judge remarked to the prosecutor that Officer Garns "misspoke" when he stated he had probable cause to arrest defendant as opposed to having probable cause to search defendant based upon his observations. However, it is well-established that a judge's colloquy with counsel during oral argument is not the equivalent of the judge's findings of fact and conclusions of law. Pardo v. Dominguez, 382 N.J. Super. 489, 492 (App. Div. 2006). As noted above, the judge clearly held that both the arrest and the search of defendant was constitutional.

Applying this standard of review, we discern no basis for disturbing the judge's denial of defendant's suppression motion.

"Warrantless searches are presumptively unreasonable and thus are prohibited unless they fall within a recognized exception to the warrant requirement[,]" such as a search incident to arrest. State v. Pena-Flores, 198 N.J. 6, 18 (2009). However, "[u]nder the search incident to arrest exception, the legal seizure of the arrestee automatically justifies the warrantless search of his person and the area within his immediate grasp." Id. at 19. "The purpose of such a search is (1) to protect the arresting officer[s] from any potential danger and (2) to prevent the destruction or concealment of evidence." State v. Dangerfield, 171 N.J. 446, 461 (2002). "[T]he ensuing search is valid even if there is no particular reason to believe that it will reveal evidence, contraband, or weapons." Pena-Flores, 198 N.J. at 19.

"[A] principal component of the probable cause [to arrest] standard 'is a well-grounded suspicion that a crime has been or is being committed.'" State v. Moore, 181 N.J. 40, 45 (2004) (quoting State v. Nishina, 175 N.J. 502, 515 (2003)). "Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or

is being committed." Id. at 46 (quoting Schneider v. Simonini, 163 N.J. 336, 361 (2000)). In determining probable cause, a court applies a totality of the circumstances test and, as part of that test, may consider the police officer's "common and specialized experience" and "evidence concerning the high-crime reputation of an area." Ibid.

The facts in Moore are virtually identical to those presented in this case. In Moore, undercover police officers were patrolling "a high crime area." Id. at 43. With the aid of binoculars, the officers saw six men congregating in a vacant lot. Ibid. The officers then observed the defendant, a companion, and a man wearing a hat walk away from the group. Ibid. The defendant and his companion handed money to the third man and he gave each of them "a small item in return, which they both immediately pocketed, before returning to the group." Ibid.

Believing they had witnessed a drug transaction, the officers approached the group, intending to arrest the defendant. Ibid. The defendant put his hand in his pocket and began to walk away. Ibid. One of the officers grabbed the defendant's arm and, as the defendant removed his hand from his pocket, the officer saw that he had two clear bags of what was later determined to be cocaine. Id. at 43-44. Under the totality of these circumstances, the

Supreme Court held that the officers had probable cause to arrest and search the defendant incident to that arrest. Id. at 47.

Similarly, in this case the officers were also conducting a surveillance in an area known for drug transactions. As in Moore, the officers observed defendant hand a small item to an individual in return for money and, just moments before, saw Johnson complete the same type of transaction with a different person. Under Moore, the officers clearly had a well-grounded suspicion that defendant and Johnson had illegally sold narcotics to the two individuals. Therefore, the police had probable cause to arrest and search defendant incident to that arrest.

Because the officers had probable cause to arrest defendant, the fact that one of the officers took the plastic bag out of defendant's jacket pocket before formally arresting him is of no moment. As the Court held in State v. O'Neal, "[w]hen the police search an individual before placing him [or her] under arrest 'as part of a single uninterrupted transaction, it does not matter whether the arrest precedes the search.'" State v. O'Neal, 190 N.J. 601, 614 (2007) (quoting State v. Bell, 195 N.J. Super. 49, 58 (1984)).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION