

**NOT FOR PUBLICATION WITHOUT THE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-1014-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARCUS K. FLETCHER,

Defendant-Appellant.

Submitted May 29, 2024 – Decided June 27, 2024

Before Judges Gooden Brown and Puglisi.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 22-01-0024.

Law Office of Khari O. Moore, PC, attorneys for appellant (Khari O. Moore, on the briefs).

Theodore N. Stephens, II, Essex County Prosecutor, attorney for respondent (Braden Couch, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After losing his motion to suppress evidence seized without a warrant, defendant Marcus Fletcher entered a negotiated guilty plea to second-degree possession of a controlled dangerous substance (CDS) with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and (b)(2), and second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b). He was sentenced in accordance with the plea agreement to an aggregate term of forty-two months in prison, with a forty-two-month parole disqualifier in accordance with the Graves Act, N.J.S.A. 2C:43-6.

Pursuant to Rule 3:5-7(d), defendant now appeals from the denial of his suppression motion, raising the following points for our consideration:

[POINT I]

THE COURT ERRED IN HOLDING THERE WAS NO DISPUTE AS TO THE MATERIAL FACTS WHEN THE DEFENSE CLEARLY DISPUTES WHETHER THE OFFICER WITNESSED [DEFENDANT] WITH A WEAPON DUE TO INCONSISTENT STATEMENTS.

[POINT II]

THE COURT ERRED IN HOLDING THAT RUNNING FROM POLICE IN ITSELF IS CAUSE FOR ARREST.

Based on our review of the record and the applicable legal principles, we affirm.

The evidential basis for the charges stemmed from a police encounter recorded in various police reports. According to the reports, at approximately

9:29 p.m. on October 26, 2021, while East Orange Police Officers Erik Cueva and Keon King were on patrol in a marked police vehicle due to recent narcotics and weapons offenses in the area, they observed defendant standing on the sidewalk in front of 428 Central Avenue wearing a large crossbody bag. After telling defendant to move along and refrain from loitering in the area, the officers resumed their patrol. Shortly thereafter, the officers circled back to the area and noticed that defendant was still standing in the same location. When they attempted to initiate an investigatory stop, defendant fled and ignored their verbal commands to stop.

The officers pursued defendant initially in their vehicle and then on foot. During the foot chase, defendant ran down the west side of 422 Central Avenue and headed towards the rear. Following the brief chase, the officers caught up to defendant and arrested him on the other side of the building. During the search incident to his arrest, the officers discovered in defendant's crossbody bag seventy-one vials of crack cocaine, weighing a total of fifty-three grams, one hundred-and-forty-six packets of heroin, five ecstasy pills, two large bags of marijuana, and various drug paraphernalia. During a subsequent canvas of the area with additional responding officers, King also found a black loaded .22 caliber revolver with a beige-colored handle by the rear of the same building.

Defendant was subsequently charged in a fourteen-count Essex County indictment with three counts of third-degree possession of CDS, N.J.S.A. 2C:35-10(a) (counts one, four, and seven); second-degree possession with intent to distribute CDS in a quantity of one-half ounce or more but less than five ounces, N.J.S.A. 2C:35-5(a)(1) and (b)(2) (count two); four counts of third-degree possession of CDS with intent to distribute within 1,000 feet of school property, N.J.S.A. 2C:35-7(a), (counts three, six, nine, and eleven); two counts of third-degree possession with intent to distribute CDS in a quantity of less than one-half ounce, N.J.S.A. 2C:35-5(a)(1) and (b)(3) (counts five and eight); third-degree possession with intent to distribute CDS in a quantity of one ounce or more but less than five pounds, N.J.S.A. 2C:35-5(a)(1) and (b)(11) (count ten); second-degree possession of a firearm in the course of committing or conspiring to commit a violation of N.J.S.A. 2C:35-5, N.J.S.A. 2C:39-4.1(a) (count twelve); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count thirteen); and fourth-degree obstruction of the administration of law, N.J.S.A. 2C:29-1 (count fourteen).

Defendant moved to suppress all evidence seized during the warrantless search. In opposition, pursuant to Rule 3:5-7(b), the State submitted a brief that included a statement of facts based on the officers' reports. The State argued

that defendant's flight after the officers attempted to conduct an investigatory stop amounted to obstruction of the administration of law, providing probable cause for arrest and admission of the evidence recovered from the bag under the search incident to arrest exception to the warrant requirement. The State argued further that the gun was admissible under the plain view exception or the inevitable discovery doctrine.

Defendant countered that he committed no crime that would provide a valid legal basis for the initial stop and subsequent arrest. Defendant also argued that a testimonial hearing was necessary pursuant to Rule 3:5-7(c), because material facts were in dispute. Specifically, in the police reports filed the day after the arrest, King and Cueva stated that "[w]ithout losing sight of [defendant, they] observed [defendant] . . . attempt to discard the big fanny pack style bag, but instead discarded a black object into the ground." In contrast, in the body-worn camera (BWC) footage, shortly after arresting defendant, King is recorded stating that during the pursuit, they "never lost sight" of defendant and that defendant "did[not] drop anything."

The motion judge conducted oral argument on July 22, 2022. In an oral opinion placed on the record the same date, the judge rejected defendant's contention that a testimonial hearing was necessary. The judge determined the

disputed facts were not material to the "assessment" of the legal issues in the case. The judge reasoned that in the reports, the officers indicated what they "saw with [their] eyes," and the BWC footage was "not dispositive." On the merits, in denying defendant's motion to suppress the evidence seized, the judge reasoned that "the officers stopped [defendant] because of the fact that he ran from the officers," which constitutes obstruction, providing a valid basis for his arrest.

The judge explained:

I'm satisfied and I find that . . . defendant was on the street, the officers did ask him to move, [and] he didn't move. . . . [W]hen they came back around again, and asked him to move and they tried to detain him because he wouldn't listen to them and comply with their instructions, he began to run rather than to stop and allow them to detain him. . . . [A]t that point, he was obstructing the administration of the law they were attempting to apply. And at that point, he discarded a gun. That gun was observed by the officer being tossed not as a gun, but as an object. . . . [W]hen [the officer] recovered the object, it turned out to be a gun.

. . . [T]herefore, I'm satisfied that the search itself and the seizure . . . that was a result of his running was lawful and I'm satisfied that the State can demonstrate that in the reports and I don't feel that there's any need for any testimony in the matter. The motion to suppress is denied, accordingly.

The judge entered a memorializing order on the same date, and a conforming judgment of conviction on November 29, 2022, following defendant's guilty plea and sentencing. This appeal followed.

On appeal, defendant argues the judge erred in concluding that the stop was lawful because "it is well settled that individuals can run from the police." Thus, defendant asserts all the evidence seized should have been suppressed.

"When reviewing a trial court's decision to grant or deny a suppression motion, appellate courts '[ordinarily] defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record.'" State v. Smart, 253 N.J. 156, 164 (2023) (alteration in original) (quoting State v. Dunbar, 229 N.J. 521, 538 (2017)). That said, "[w]e will set aside a trial court's findings of fact only when such findings 'are clearly mistaken.'" Dunbar, 229 N.J. at 538 (quoting State v. Hubbard, 222 N.J. 249, 262 (2015)). "We accord no deference, however, to a trial court's interpretation of law, which we review de novo." Ibid.

Turning to the substantive legal principles, "[a] warrantless search [or seizure] is presumed invalid unless it falls within one of the recognized exceptions to the warrant requirement." State v. Gamble, 218 N.J. 412, 425 (2014) (quoting State v. Cooke, 163 N.J. 657, 664 (2000)). Because all

warrantless searches or seizures are "presumptively unreasonable," State v. Elders, 192 N.J. 224, 246 (2007), "the State bears the burden of demonstrating by a preponderance of the evidence that an exception to the warrant requirement applies," State v. Manning, 240 N.J. 308, 329 (2020).

"[T]he warrantless search of persons incident to their lawful arrest" is a "well[-]established" exception to the warrant requirement. State v. Torres, 253 N.J. 485, 503 (2023) (citing Chimel v. California, 395 U.S. 752, 762-63 (1969)). "[B]ecause a lawful 'custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment[,] . . . a search incident to the arrest requires no additional justification.'" State v. Lentz, 463 N.J. Super. 54, 70 (App. Div. 2020) (second alteration and omission in original) (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)). "Probable cause exists when the totality of the facts and circumstances presented to an arresting officer would support a person 'of reasonable caution in the belief that an offense has been or is being committed.'" Torres, 253 N.J. at 503 (quoting State v. Sims, 75 N.J. 337, 354 (1978)). To that end, "the mere 'fact of the lawful arrest which establishes the authority to search' justifies 'a full search of the person.'" Lentz, 463 N.J. Super at 70 (quoting Robinson, 414 U.S. at 235).

Here, the issue is whether the officers lawfully arrested defendant for obstructing the administration of law under N.J.S.A. 2C:29-1 to trigger a warrantless search of his person incident to the arrest. Defendant reprises his argument that the initial stop was unlawful because loitering is not a crime in this State. As a result, according to defendant, when the officers attempted to detain him, they were not performing an official lawful function, a required element of an obstruction charge. On this point, our Supreme Court's well-established case law is dispositive.

In State v. Crawley, 187 N.J. 440, 448 (2006), the Court addressed whether the defendant violated the obstruction statute "when he ran from the police after receiving an order to stop for questioning." The statute provides:

A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.

[N.J.S.A. 2C:29-1(a).]

In interpreting the statutory requirement, "lawfully performing an official function," the Court determined the language applied to "a police officer acting in objective good faith, under color of law in the execution of his duties."

Crawley, 187 N.J. at 460-61. Moreover, the Court held that "when a police officer is acting in good faith and under color of his authority, a person must obey the officer's order to stop and may not take flight without violating N.J.S.A. 2C:29-1," "even if a court later determines that reasonable suspicion was lacking to justify the stop." Id. at 451-52. The Court reasoned "[a] person has no constitutional right to use an improper stop as justification to commit the new and distinct offense of resisting arrest, eluding, escape, or obstruction, thus precipitating a dangerous chase that could have deadly consequences." Id. at 459.

The Court recognized the strong public policy and legislative intent that "a person involved in a police encounter should [not] have an incentive to flee or resist, thus endangering himself, the police, and the innocent public." Id. at 451. The Court noted that although "[t]he suspect may in fact have committed no offense, . . . he cannot be the judge of his own cause and take matters into his own hands and resist or take flight." Id. at 459. Instead, "[t]he proper forum to challenge supposed unlawful police conduct is in court." Id. at 459-60.

The Crawley Court therefore affirmed the defendant's obstruction conviction where two police officers attempted to stop the defendant for questioning after receiving a dispatch describing an armed suspect fitting the

defendant's description, but the defendant obstructed their efforts by fleeing. Id. at 461-62. The Court concluded:

[I]n relying on the dispatch from headquarters[,] the officers were "lawfully performing an official function" when they commanded defendant to stop. Defendant's obligation to comply with that command did not depend on how a court at some later time might decide the overall constitutionality of the street encounter. Because the officers acted in good faith and under color of their authority, defendant violated the obstructing statute when he took flight, thus endangering himself, the police, and the public.^[1]

[Id. at 443-44.]

In State v. Williams, 192 N.J. 1, 13 (2007), the Court clarified that an officer is presumed to be acting in good faith, so long as an officer making an investigatory stop reasonably relies on information provided to him or her and does not "without any basis arbitrarily detain[] a person on the street." Ibid. (quoting Crawley, 187 N.J. at 461 n.8). In Williams, the underlying stop was "presumed unconstitutional," but the Court nevertheless declined to suppress the evidence because the defendant's "resistance to the pat down and flight from the police . . . was an intervening act—the crime of obstruction—that completely purged the taint from the unconstitutional investigatory stop." Id. at 4, 18. The

¹ Because the State lost the contraband seized during his arrest for obstruction, the defendant had no need to move to suppress evidence. Id. at 446-47.

Court concluded that because the evidence seized from the defendant was incident to a lawful arrest for obstruction, suppression was not required. Id. at 18. In so doing, the Court reiterated that "when a police officer commands a person to stop, . . . that person has no right to take flight or otherwise obstruct the officer in the performance of his duty." Id. at 11.

Applying these principles, we are satisfied the officers had probable cause to arrest defendant because defendant's flight, after the officers requested him to stop for questioning, gave rise to an obstruction charge. Sufficient credible evidence in the record supports the findings that the officers were "'lawfully performing an official function'—an attempted investigatory stop—when defendant obstructed their efforts by fleeing." Crawley, 187 N.J. at 462. Because the officers were acting in good faith, "[w]e see nothing unreasonable about the steps" they took. Ibid.

Contrary to defendant's assertion, although the initial stop may not have been based on reasonable suspicion that defendant was committing a crime, defendant was nonetheless obligated to obey the officers' command, even if it was arguably unconstitutional. See Williams, 192 N.J. at 10. Instead, defendant "ignore[d] [the officers'] verbal commands to stop and proceeded to" flee, resulting in a "dangerous chase that could have [had] deadly consequences,"

Crawley, 187 N.J. at 459. Defendant's flight was an "intervening act" that "purged the taint" from any unconstitutional or invalid stop. Williams, 192 N.J. at 18. As such, all evidence seized as a result of the search incident to the lawful arrest for obstruction is admissible.

Defendant also renews his argument that the clear contradiction between what the officers stated they witnessed immediately after the arrest, which was captured on the BWC footage, and what the officers stated in their police reports creates disputed material facts necessitating a testimonial hearing. Indeed, Rule 3:5-7

provides that the filing of a motion by a defendant asserting that evidence to be used against him was seized in a warrantless search triggers a requirement that "the State shall, within fifteen days of the filing of the motion, file a brief, including a statement of facts as it alleges them to be, and the movant shall file a brief and counter statement of facts no later than three days before the hearing." It is only when the defendant's counter statement places material facts in dispute that an evidentiary hearing is required.

[State v. Green, 346 N.J. Super. 87, 90 (App. Div. 2001) (quoting R. 3:5-7(b)).]

Despite the apparent inconsistency, the statements are nonetheless insufficient to create a material factual dispute because probable cause to arrest defendant for obstruction arose once defendant fled after receiving the officers'

verbal commands to stop. As such, the contradictory statements are immaterial to the validity of the search and an evidentiary hearing to determine the veracity of the officers' statements is therefore unnecessary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION