SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000673-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Hudson County.
SHAQUIL D. HUGGINS, A/K/A SHAQUIL HUGGINS	:	Indictment No. 21-08-00685-I
Defendant-Appellant.	:	Sat Below:
	:	Hon. Angelo Servidio, J.S.C. and a jury

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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JUDGMENT, ORDERS AND RULINGS BEING APPEALED

[1] Pursuant to Rule 2:6-1(a)(2) the State's brief opposing the motion to suppress from trial is included in the appendix because the trial court referred to it in its written decision denying the motion to suppress.

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PRELIMINARY STATEMENT

The police in this case repeatedly failed to abide by constitutional protections afforded to citizens during a traffic stop. On the evening defendant Shaquil D. Huggins was arrested, the police unlawfully (1) conducted a motor vehicle stop of the car in which Huggins was the passenger; (2) prolonged that traffic stop; (3) asked Huggins, the passenger, out of the vehicle; and (4) attempted to frisk Huggins for weapons. Each of these actions plainly violated Huggins's constitutional rights, and any argument that the evidence discovered was attenuated from the taint of such extensive illegal police action must be rejected. Thus, the evidence seized from the unlawful stop and seizure must be suppressed in order to uphold the constitutional guarantee that citizens are free from unreasonable searches and seizures. In the alternative, there were numerous trial errors that clearly had the capacity to mislead the jury and deprive Huggins of a fair trial. These errors included the improper admission of other-crimes evidence that had the capacity to inflame the jury and improper statements during summation that amounted to prosecutorial misconduct. Consequently, a reversal of Huggins's convictions is required.

PROCEDURAL HISTORY

On August 2, 2021, a Hudson County grand jury returned Indictment No. 21-08-00685-I, charging the defendant, Shaquil D. Huggins, with second-degree

unlawful possession of a firearm without a permit, contrary to N.J.S.A. 2C:39-5b(1) (count one); second-degree certain persons not to have a weapon, contrary to N.J.S.A. 2C:39-7b(1) (count two); fourth-degree possession of a prohibited device, contrary to N.J.S.A. 2C:39-3f(1) (count three); third-degree resisting arrest, contrary to N.J.S.A. 2C:29-2a(3)(a) (count four); fourth-degree obstructing the administration of the law, contrary to N.J.S.A. 2C:29-1a (count five); two counts of third-degree possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10a(1) (count six (cocaine) and count seven (heroin)); second-degree possession/distribution within 500 feet of a public housing facility, contrary to N.J.S.A. 2C:35-7.1a (count eight); and third-degree manufacture/distribution of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) (count nine). (Da 1-4)[2]

Huggins filed a motion to suppress evidence, and it was heard on February 10 and 23, 2022, before the Hon. Angelo Servidio, J.S.C. (1T, 2T) On March 28, 2022, Judge Servidio issued a written opinion denying the motion to suppress. (Da 5-14).[3] Prior to trial, Judge Servidio granted the State's motion to dismiss

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[2] Da- Defendant's appendix; 1T – February 10, 2022 (Suppression); 2T – February 23, 2022 (Suppression); 3T – February 22, 2023 (Adjournment); 4T – March 20, 2023 (Adjournment); 5T – July 6, 2023 (Pretrial Conference); 6T – July 10, 2023 (Hearing); 7T – July 18, 2023 (Trial); 8T – July 19, 2023 (Trial); 9T – July 20, 2023 (Trial); 10T – July 21, 2023 (Trial and Plea); 11T – September 15, 2023 (Sentence).

[3] Judge Servidio also read the written opinion into the record at a hearing on March 28, 2022. (Da 14)

counts eight (possession/distribution within 500 feet of a public housing facility) and nine (manufacture/distribution of CDS) of the indictment. (7T 5-10 to 7-1) A four-day jury trial on counts one, three, four, five, six, and seven of the indictment then commenced before Judge Servidio. (7T-10T) Huggins was found guilty by the jury on counts one (unlawful possession of a firearm), three (possession of a prohibited device), six and seven (possession of CDS), but was acquitted of counts four (resisting arrest) and five (obstruction). (10T 16-8 to 17-17; Da 26-27) Following the verdict and the jury's dismissal, Huggins pled guilty to count two (certain persons not to have a weapon) of the indictment. (10T 20-5 to 28-9; Da 28-33)

On September 15, 2023, Huggins was sentenced to an aggregate term of twelve years with six years of parole ineligibility: twelve years with six years of parole ineligibility pursuant to a mandatory extended term on count one, five years with five years of parole ineligibility on count two, eighteen months flat on count three, and three years flat on counts six and seven, all to run concurrently with each other. (11T 17-12 to 18-19; Da 34-37)

On November 2, 2023, Huggins filed a Notice of Appeal. (Da 38-41)

STATEMENT OF FACTS

On April 25, 2021, Officer Hany Kased of the Bayonne Police Department executed a traffic stop of a vehicle, in which the defendant, Shaquil D. Huggins, was a passenger. (1T 6-1 to 9, 10-15 to 16, 110-13 to 16)

A. Motion to Suppress Hearing

Officer Kased testified that on April 25, 2021, he and Officer Joseph Giordano were on patrol in two separate marked police vehicles. (1T 10-15 to 11-18) At approximately 12:45 A.M., Kased observed a vehicle "traveling at a low rate of speed . . . in violation of impeding the normal flow of traffic." (1T 11-22 to 12-1) The speed limit on the road was 45 miles per hour, but Kased observed the vehicle traveling "at a very slow rate of speed, that other vehicles had to go around it." (1T 12-11 to 15) Kased did not provide an estimate of the vehicle's speed but stated that "[a] good amount" of cars were on the road at 12:45 A.M. (1T 12-16 to 18) Further, Kased noted that the vehicle had four tinted windows, but that they were "lightly tinted, not too dark." (1T 13-1 to 7)

Kased then began to follow the vehicle because of its slow driving "at that time of night." (1T 14-16 to 20) However, before Kased could activate his lights to initiate a stop, the driver independently pulled over. (1T 14-25 to 15-12, 17-2 to 5, 66-17 to 20) Kased then pulled up next to the vehicle and questioned the driver on why he pulled over; the driver responded that they were lost. (1T 14-

25 to 15-12) Kased then testified that he activated his lights and exited the vehicle to investigate further. (1T 17-8 to 18-3)

The vehicle's driver also testified during the suppression hearing and explained that he was driving Huggins back to Hoboken when he missed a turn, so he pulled over with his hazards on to adjust the GPS on his phone. (1T 108-20 to 109-17) The driver testified that an officer, presumably Kased, then pulled up next to him and began a conversation. (1T 109-19 to 110-12) The driver, who is white, testified that Kased had told him he was free to go but then realized there was a passenger in the vehicle – Huggins. (1T 77-9 to 10, 111-1 to 14) The driver testified that after Kased saw Huggins, who is Black, he decided to get out of the police vehicle. (1T 77-11 to 14, 111-8 to 14) Kased did not turn on his body worn camera (BWC) during this initial conversation and admitted that though it was policy to activate BWC when coming into contact with a member of the public, he violated the policy. (1T 18-10 to 19-10, 67-6 to 68-7)

After exiting his vehicle, Kased finally turned his BWC on. (1T 18-19 to 25) Kased's BWC was admitted into evidence and a portion was played at the suppression hearing. (1T 56-2 to 60-18; Da 42) Kased approached the passenger's side of the vehicle, while Giordano approached the driver's side. (1T 18-10 to 18) Kased requested the driver's credentials, which the driver provided without hesitation, but Kased never checked the validity of the

credentials through any system. (1T 19-19 to 22, 71-20 to 74-17; Da 42 00:00-07:00) Kased also requested Huggins's license on the basis that he did not have a seatbelt on when Kased approached the vehicle – again, Kased did not process Huggins's license through any system during their initial interaction. (1T 21-8 to 13; Da 42 01:40-07:00)

At this point in the stop, Kased did not attempt to issue any tickets but instead engaged in "small talk" with Huggins. (1T 22-8 to 9, 77-15 to 20; Da 42 00:00-05:00) He commented on Huggins's shoes and asked Huggins where he works. (1T 75-15 to 76-19; Da 42 02:00-03:40) He then asked Huggins "when was the last time you've been arrested," despite Huggins never indicating that he had been arrested before. (1T 78-3 to 79-4; Da 42 03:55-04:35) Kased also asked Huggins whether there were any weapons or contraband in the vehicle, to which Huggins responded no several times – though Kased admitted that in his police report he incorrectly reported that Huggins did not respond to this question. (1T 86-8 to 23; Da 42 04:25-05:00)

Kased did not ask the driver any of these questions. (1T 81-6 to 8) Instead, during his conversation with Huggins, Kased requested that the driver exit the vehicle for "officer safety" because he appeared nervous. (1T 19-19 to 20-20; Da 42 03:35-0:3-50) Giordano remained with the driver as Kased continued his conversation with Huggins. (1T 21-6 to 10) Kased further testified Huggins

engaged in "furtive movements" during the conversation. (1T 21-23 to 22-2) According to Kased, Huggins first reached toward the center console for a lighter and lit a cigar in his hand. (1T 22-8 to 15, 100-2 to 4) However, on cross-examination, Kased could not remember where the lit cigar went – it was not visible in the BWC and Huggins did not have it when he exited the vehicle. (1T 97-11 to 100-4; Da 42 00:00-7:00) Kased also stated that Huggins touched the fanny pack he was wearing during their conversation and at one point "bla[d]ed" his body away from Kased. (1T 22-8 to 17, 23-16 to 18, 24-1 to 6) These observations, along with the time of night, and Kased's personal experience of arresting an individual who had a firearm inside a fanny pack, led to Kased ordering Huggins out of the vehicle so that he could conduct a frisk for weapons. (1T 22-15 to 22, 25-22 to 26-6, 27-23 to 28-6) In contrast to Kased's testimony, the driver denied that Huggins ever reached into the center console and maintained that Huggins was cooperative and responsive. (1T 112-22 to 113-14, 114-5 to 11, 124-9 to 21)

Huggins exited the vehicle, but when Kased began preparing to frisk Huggins, Huggins's hands went toward the fanny pack. (1T 30-18 to 23) At that point, Kased "grabbed both" of Huggins's hands "in fear." (1T 30-19 to 23) In response, Huggins pushed away from Kased and ran, but Kased and Giordano ultimately tackled and restrained Huggins. (1T 30-18 to 31-13) In the midst of

the altercation, Kased alleged that Huggins took the fanny pack off his body and threw it over a fence; this was not caught on Kased or Giordano's BWC. (1T 31-14 to 22; Da 42 06:20-07:00; Da 43 04:10-05:50) Giordano's BWC was also admitted into evidence and captures Huggins exiting the vehicle and the altercation between Huggins and Kased. (1T 61-4 to 62-9; Da 43 04:10-05:50)

After Huggins was placed under arrest and in the patrol vehicle, officers on the scene located the fanny pack over the fence; the officers opened the fanny pack and found a firearm. (1T 38-18 to 24, 42-14 to 23) The officers then conducted a full search of the vehicle, including all compartments, without a warrant or the driver's consent, and nothing was found. (1T 101-13 to 104-7) Huggins was subsequently issued a ticket for the lack of seatbelt, and two tickets were also mailed to the driver for tinted windows and hindering driving. (1T 53-24 to 54-2, 118-6 to 12) The driver was released from police custody after the search of his vehicle. (1T 118-13 to 15) That same day, during processing and intake, officers recovered cocaine and heroin from Huggins. (Da 7, 17-18)

In a written decision, the trial court denied the motion to suppress. (Da 5-14) The court found Kased to be a credible witness, but did not make a credibility finding for the driver. (Da 8) The court held that the officers "had objectively valid reasons to stop the vehicle" due to multiple motor vehicle infractions including driving slowly, tinted windows, and not parking in a lawful

parking space. (Da 8-10) The court also held that Kased's questioning of Huggins was lawful. (Da 10) The court next held that Kased "had an objectively valid reason" to request Huggins out of the vehicle. (Da 10-13) The court initially determined that the fact Huggins was not wearing a seatbelt could have been enough to establish a basis for requesting Huggins out of the vehicle. (Da 10-13) But the court further held that Kased's observations of Huggins's "furtive movements" justified Huggins's removal from the vehicle and subsequently the protective pat-down as well. (Da 10-13) Thus, the court denied Huggins's motion to suppress. (Da 13)

B. Trial

Trial commenced before Judge Servidio and a jury on July 18, 2023. (7T) Additional police witnesses discussed the motor vehicle stop at length over the course of the trial. (7T-9T) Officer Giordano, who did not testify at the suppression hearing, first testified and described the stop similarly to what was revealed at the suppression hearing. However, Giordano testified that Kased "took the lead . . . in the motor vehicle stop." (7T 44-11 to 14, 46-9 to 11) Giordano did not ask for the driver's credentials and testified that Kased was the one who spoke with the driver – Giordano instead "was there solely observing." (7T 44-16 to 22, 54-2 to 4, 57-18 to 25)

Kased testified again at trial and provided additional details regarding the stop that were not presented at the suppression hearing. Kased spoke of his decision to approach the passenger's side rather than the driver's side, stating that he "can go to any side" he wants, but explaining that it is "a little safer" for him on the passenger's side though Giordano still approached the driver's side. (7T 89-23 to 90-24) Further, despite Giordano's recollection of events, Kased testified that he "wasn't speaking to the driver much," and it was Giordano who "was speaking to the driver." (7T 71-18 to 22) Kased also stated that he did not exactly see what was thrown over the fence during the physical interaction between him and Huggins. (7T 100-21 to 101-2) Kased admitted again that he activated his BWC later than he was supposed to. (7T 103-2 to 11)

Next, the remaining witnesses testified to the series of events that occurred after Huggins's arrest. Officer Kevin Baranok testified that he arrived on the scene after Huggins was already restrained on the ground. (7T 122-15 to 18) Baranok did not personally witness anything being thrown over the fence, but Kased told him that is what occurred, so Baranok climbed over the fence to investigate. (7T 122-20 to 123 to 4, 135-2 to 4). On the other side of the fence, Baranok found a fanny pack, opened it, and discovered a loaded firearm with a hollow point bullet inside. (7T 123-7 to 124-21)

Later that evening, Huggins was transported back to Bayonne police headquarters where Officer Eric Shaefer conducted a "systematic check" for contraband, prior to placing Huggins in holding. (8T 21-25 to 23-22) During this check, two vials of "suspected crack cocaine" were found in Huggins's pants pocket. (8T 23-23 to 24-4) Natalia Platosz, certified as an expert in forensic chemistry, conducted an examination of the vials and concluded that the substance discovered was cocaine. (9T 10-14 to 11-8, 21-3 to 17) On the same day, Huggins was transported to Hudson County Department of Corrections where Correctional Officer Brian Kornas conducted a full body search of Huggins. (8T 28-20 to 29-16) During the search, small bags of "suspected heroin" were discovered in Huggins's underwear. (8T 29-10 to 23) Platosz confirmed that what was discovered did consist of heroin, as well as fentanyl. (9T 28-11 to 29-9)

Detective Sergeant Edward Burek was certified as an expert in firearms and ballistics during trial and testified that the firearm discovered was operable. (8T 36-21 to 25, 40-13 to 42-2) Further, James Hearne of the New Jersey State Police conducted a firearm permit search and determined that Huggins did not have a permit to purchase or carry a firearm. (8T 47-16 to 20, 49-24 to 51-19)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED AS A RESULT OF AN UNLAWFUL STOP AND SEIZURE. (Da 5-14)

Both the United States and New Jersey Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7. Here, Huggins's right to be free from unreasonable searches and seizures was violated multiple times the night the officers unlawfully stopped and seized him. First, Officer Kased stopped the vehicle Huggins was a passenger in without the required reasonable and articulable suspicion that any traffic violation occurred. Next, Kased unlawfully extended the stop when he excessively and intrusively questioned Huggins on matters unrelated to the apparent reason for the stop. Then, Kased ordered Huggins, the passenger, out of the car without any heightened caution necessitating that command and attempted to frisk him without any reasonable and articulable suspicion that he was armed and dangerous. These actions led to the illegal discovery of evidence that was not attenuated from the taint of the officers' misconduct. For any or all of these reasons, the evidence found must be suppressed, and Huggins's convictions reversed. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7.

A. The State Failed To Carry Its Burden In Establishing That Police Had A Reasonable And Articulable Basis To Stop The Vehicle Defendant Was A Passenger In For Any Of The Minor Traffic Violations It Relied Upon.

The State did not meet its burden to show that the car stop was lawful because it failed to present sufficient evidence that the driver was in violation of any motor vehicle laws. For a motor vehicle stop to be constitutionally justified, "a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense." State v. Smith, 251 N.J. 244, 258 (2022) (quoting State v. Scriven, 226 N.J. 20, 33-34 (2016)). A court will evaluate the totality of the circumstances and assess the facts that were "available to the officer at the moment of the seizure" to determine whether the officer had the requisite reasonable and articulable suspicion to justifiably conduct the stop. Id. at 258 (quoting State v. Alessi, 240 N.J. 501, 518 (2020)).

The State argued that two motor vehicle violations justified the stop: impeding the flow of traffic violation, contrary to N.J.S.A. 39:4-97.1, and a tinted windows violation. (2T 4-10 to 14; Da 20-21) Kased predominantly testified that the reason he attempted to stop the vehicle was because the driver was driving slowly and impeding the flow of traffic. (1T 11-24 to 12-25, 13-14 to 15-12) It was the State's responsibility and obligation "to put forth facts at the suppression hearing to establish" that Kased "had a particularized suspicion based upon an objective observation" that the driver impeded the flow of traffic

statute pursuant to N.J.S.A. 39:4-97.1. State v. Boone, 479 N.J. Super. 193, 210 (App. Div. 2024). The State failed to meet its obligation.

N.J.S.A. 39:4-97.1 provides that "[n]o person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law." The few New Jersey published decisions have not expressly addressed the State's burden in establishing reasonable and articulable suspicion that N.J.S.A. 39:4-97.1 was violated in order to effectuate a stop. See State v. Martinez, 260 N.J. Super. 75, 77-78 (App. Div. 1992) (noting that N.J.S.A. 39:4-97.1 was not a justification for the car stop because even though the defendant was driving very slowly, there was "no prospect" that he "would create a traffic jam" since he was traveling on a residential road at 2:00 A.M.); State v. Seymour, 289 N.J. Super. 80, 89-90 (App. Div. 1996) (D'Annunzio, J.A.D., concurring) (concurring that the stop at issue was lawful, but relying upon N.J.S.A. 39:4-97.1 as the basis for the stop, finding that the troopers who stopped the defendant "observed traffic in the far right lane of Interstate 78 braking to avoid overtaking defendant's vehicle, which was being operated at forty miles per hour").

Despite the absence of binding caselaw interpreting N.J.S.A. 39:4-97.1, this Court recently analyzed a similar statute in Boone, illustrating the level of

detailed testimony that is required to justify a traffic stop for a minor infraction. In Boone, the defendant was issued a ticket for failure to maintain a lane. 479 N.J. Super. at 207. The court found the testifying detective's "generalized statement" that the defendant crossed the lane more than once was not enough to establish reasonable suspicion that the relevant motor vehicle statute was violated because he did not testify to "any particulars as to where, how many times, over what distance, how extensive the incursion or the effect of the darkness, the rain, the [car]'s size and the condition of the road." Id. at 207, 209-10. The court emphasized that describing the vehicle crossing the center line once cannot alone establish the violation because, according to the statute, drivers are only required to maintain a lane "as nearly as practicable." Ibid.

Similarly, to determine whether N.J.S.A. 39:4-97.1 has been violated, a "generalized statement" that a vehicle was driving slowly and impeding traffic is not enough. Though Kased testified that the vehicle was traveling "at a very slow rate of speed, that other vehicles had to go around it," he did not provide "any particulars" regarding whether traffic actually was indeed blocked or affected, how many vehicles were impacted, or if there were any other reasons for why vehicles on the road may have went around the driver. (1T 12-11 to 15)

Further, the statute plainly asserts that driving slowly is permissible if it is necessary for "safe operation." N.J.S.A. 39:4-97.1. Thus, more "particulars"

need to be put forth to also determine whether there were any safety concerns that required the vehicle's slow speed. Kased provided virtually no testimony regarding the conditions of the driver's vehicle, of the road, of other drivers, or the surrounding environment to ascertain whether a slow rate of speed was necessary for safety reasons. Kased simply testified that at 12:45 A.M. he witnessed the vehicle "traveling at a low rate of speed . . . in violation of impeding the normal flow of traffic" and that "other vehicles had to go around it." (1T 11-22 to 12-15) The only possible safety condition he actually testified to was the fact that it was "clear weather" on the night in question.[4] (2T 13-8 to 13) Like Boone, Kased's vague and conclusory testimony was not enough to establish that he had the reasonable and articulable suspicion necessary to lawfully stop the vehicle Huggins was traveling in. Thus, the State failed to meet its burden to show that a violation of N.J.S.A. 39:4-97.1 justified the stop here.

The State's second basis for the stop, a tinted windows violation, likewise fails because of New Jersey Supreme Court's holding in Smith. In Smith, the Court held that "[i]n order to establish a reasonable suspicion of a tinted windows violation . . . the State will . . . need to present evidence that tinting on

[4] Notably, Kased and Giordano's BWC footage reveal that Kased and the driver discussed the fact it was going to rain, which the driver testified was the case as well. (1T 110-4 to 12; Da 42 02:28-02:48; Da 43 01:20-01:45)

the front windshield or front side windows inhibited officers' ability to clearly see the vehicle's occupants or articles inside." 251 N.J. at 266.[5] Here, the State failed to establish that Kased had a reasonable and articulable suspicion that the vehicle was in violation of any tinted windows statute. The only testimony Kased provided regarding the windows was that the vehicle's windows were "lightly tinted" and "not too dark." (1T 13-6 to 7) This testimony provides absolutely no support that the windows were so dark that it inhibited the officers' "ability to clearly see the vehicle's occupants or articles inside." Smith, 251 N.J. at 266. Thus, the State also did not set forth sufficient facts that there was a reasonable and articulable basis to stop the vehicle for tinted windows.

Therefore, the State failed to establish that the officers had any lawful basis to conduct the motor vehicle stop, and all evidence seized as a result of the motor vehicle stop must be suppressed.[6]

B. The Officers Unlawfully Extended The Stop Beyond The Time Needed To Complete The Stop's Mission.

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[5] The Appellate Division later determined that this rule regarding tinted windows is entitled to pipeline retroactivity. State v. Haskins, 477 N.J. Super. 630, 638 (App. Div. 2024).

[6] The trial court also noted that when the driver pulled over, the vehicle was not parked in a lawful space and that this traffic violation can also serve as a basis for the stop. (Da 10) However, no tickets were issued for this alleged violation, the State did not indicate what traffic law the car was violating, and Kased did not testify that this was a basis for conducting the stop. (2T 4-5 to 14; Da 15-25) Thus, the State did not put forth sufficient facts on the record to establish that there was a reasonable basis for the stop because of how the vehicle was parked.

The officers continued to violate Huggins's constitutional rights when they unlawfully extended the stop beyond the time needed to complete the mission of investigating the alleged traffic violations. Even when officers validly conduct a motor vehicle stop, such stops may not be "unduly prolonged." State v. Williams, 254 N.J. 8, 41 (2023). When officers "exceed[] the time needed to handle the matter for which the stop was made," the stop is considered an unreasonable seizure in violation of the Fourth Amendment. Rodriguez v. United States, 575 U.S. 348, 350 (2015). Officers may conduct "unrelated checks" or ask questions unrelated to the traffic stop during the interaction, so long as those actions "do not measurably extend the duration of the stop" and are not excessive. Id. at 355. But, to prolong the stop "beyond the time required to complete the stop's mission," an officer needs "reasonable suspicion independent from the justification for a traffic stop" that an offense is being or has been committed. State v. Dunbar, 229 N.J. 521, 540 (2017).

Kased unduly prolonged the stop when he excessively questioned Huggins, the passenger of the vehicle, on matters both wholly unrelated to the alleged purpose of the traffic stop – i.e., impeding traffic and tinted windows – and to the alleged seatbelt violation Huggins had committed. Although he was purportedly interested in the driver's commission of traffic violations, Kased instead first "walked right over to the passenger," while Giordano went to the

driver's side. (1T 14-25 to 16-3, 17-2 to 18, 18-24 to 25) Kased then requested the driver's credentials, "looked" at them, but admitted he never validated them through any system, testifying that "[y]ou don't have to run it" to determine whether the license is valid. (1T 72-12 to 14, 73-5 to 74-14; Da 42 00:00-07:00)

Around the same time, Kased also requested Huggins's license because Huggins was not wearing a seatbelt when he "approached the vehicle." (1T 74-18 to 75-11) Huggins provided his license without hesitation, yet again seemingly no effort was made to check Huggins's license or write him a ticket for the alleged seatbelt violation at that time. (1T 75-7 to 11; Da 42 01:40-07:00) Instead, Kased began to ask Huggins irrelevant and intrusive questions, including questions about his shoes, his employment, how he makes money, and when the last time he was arrested despite Huggins never indicating he had a prior criminal history. (1T 75-7 to 79-4, 80-23 to 81-5; Da 42 00:00-05:00)

This intrusive questioning unlawfully prolonged the stop. Although it occurred at the beginning of the stop, no effort was made to actually complete the mission of the stop. (Da 42 00:00-07:00) Though the United States Supreme Court has held that unrelated questions may be asked during a stop, it cannot be that the Court intended to allow officers to delay validating credentials or issuing tickets to ask questions wholly unrelated to the stop. Rodriguez, 575 U.S. at 355. In fact, the Court emphasized that "[a]uthority for the seizure ends when tasks

tied to the traffic infraction are – or reasonably should have been – completed." Rodriguez, 575 U.S. at 354 (emphasis added). Here, Kased could have reasonably completed the stop during the time he decided to engage in an irrelevant and intrusive conversation with Huggins. Though Kased testified that during this interaction he began to become increasingly suspicious of the driver and Huggins, his suspicions only began to form as he unduly prolonged the stop by failing to write the driver or Huggins a ticket and let them go on their way. Thus, Kased's actions unlawfully extended the stop in violation of Huggins's constitutional rights, and the evidence must be suppressed as a result.

C. The Officers Unlawfully Ordered Defendant, Who Was The Passenger, Out Of The Vehicle.

Kased next violated Huggins's constitutional rights when he asked Huggins – the passenger – to exit the vehicle without the "heightened caution" necessary to justify such police action. Under the applicable standard, risk to officer safety is the guiding principle for whether a passenger's removal from a vehicle is appropriate. State v. Smith, 134 N.J. 599, 617-18 (1994); State v. Bacome, 228 N.J. 94, 96-97 (2017). Though it is a per se rule that an officer can "order the driver out of a vehicle incident to a lawful stop for a traffic violation," the New Jersey Supreme Court has expressly held that this rule does not extend to passengers. Smith, 134 N.J. at 618. Accordingly, an officer must point to "specific and articulable facts that would warrant heightened caution to justify

ordering the occupants to step out of a vehicle detained for a traffic violation." Ibid. In other words, an officer must show that the circumstances "would [have] creat[ed] in a police officer a heightened awareness of danger . . . ." Ibid. An officer's "hunch" is not enough – they "must be able to articulate specific reasons why the person's gestures or other circumstances caused the officer to expect more danger from this traffic stop." Id. at 619.

The Court reaffirmed the "heightened caution" standard as applied to passengers in Bacome and further held that "[f]urtive movements may satisfy the heightened caution standard," if those furtive movements lead an officer to believe that their safety is at risk.[7] 228 N.J. at 107. In Bacome, the officer observed the defendant-driver reach forward under his seat. The Court held that this "furtive movement" was enough to establish heightened caution and ask the passenger out of the vehicle because the officer could not be sure whether the movement "was to hide a weapon or a box of tissues," thus officer safety was at risk. Ibid. Importantly, Bacome does not adopt a bright-line rule that furtive

[7] The trial court suggested in its written decision that the fact Huggins was not wearing a seatbelt could alone have justified his removal from the vehicle. (Da 11-12) But, in Bacome the reason for the stop was the fact that the passenger was not wearing his seatbelt. 228 N.J. at 97, 103-04. Despite this fact, the Court went on to reaffirm the "heightened caution" standard and found that the removal of the passenger was justified because the officers met the heightened caution standard – the Court did not mention the passenger's failure to wear a seatbelt as the justifiable reason for requesting the passenger out of the vehicle. Id. at 106-08.

movements always establish heightened caution, likely because it is not unreasonable for individuals to be nervous or anxious during a traffic stop. Ibid.; see, e.g., State v. Rosario, 229 N.J. 263, 277 (2017) ("Nervousness and excited movements are common responses to unanticipated encounters with police officers on the road."); State v. Lund, 119 N.J. 35, 48 (1990) ("[t]hat defendant appeared nervous while the police searched the car proves little more than that the presence of police officers tends to make most people somewhat apprehensive" (quoting State v. Palacio, 111 N.J. 543, 558 (1988) (Stein, J., dissenting))); United States v. Perkins, 348 F.3d 965, 970 (11th Cir. 2003) (noting that "a traffic stop is an 'unsettling show of a authority' that may 'create substantial anxiety'" (quoting Delaware v. Prouse, 440 U.S. 648, 657 (1979))). Thus, the guiding principle is whether any furtive movement observed created a threat to officer safety. Ibid.

Here, Kased predominantly relied upon his observations of Huggins's "furtive movements" as the reason he asked Huggins, the passenger, out of the vehicle. (1T 21-23 to 22-2, 25-22 to 26-6) Kased first testified that Huggins reached "around the center console" to light a cigar – but the trial court did not expressly find that Huggins reached toward the center console. (1T 22-8 to 15, 100-2 to 4; Da 5-14) In fact, Kased could not remember where the lit cigar went during their interaction. (1T 98-2 to 99-20) Further, Kased testified that Huggins

touched his fanny pack that he was wearing and "bladed" his body away from Kased. (1T 24-1 to 16) But importantly, all of these movements occurred while Kased was actually observing and speaking with Huggins, unlike the circumstances presented in Bacome. In Bacome, as the officer approached the defendant, he saw the defendant leaning forward under his seat. 228 N.J. at 97. As the Court highlighted, the officer could not be certain what the defendant had in his hands prior to reaching forward; thus, the Court found that it is the "unknown nature of surreptitious movements" that creates a risk to officer safety. Id. at 107. Similarly, in Smith, the officer observed the driver and the passengers of the vehicle passing something between themselves as the officer signaled to the vehicle to pull over – while still driving in his vehicle, the officer could not ascertain what unknown item was being passed, thus justifying the need for heightened caution. Smith, 134 N.J. at 604-05, 619.

In contrast, nothing about Huggins's movements was unknown. For instance, even if Huggins did reach toward the center console, Kased's testimony reveals that he quickly was able to ascertain that Huggins obtained a lighter rather than any contraband. Further, though Huggins was touching his fanny pack, the fact that Kased could testify to such actions again shows that Huggins was in Kased's view the entire time, and there was never any allegation that Huggins attempted to remove anything from the fanny pack. Lastly, even

though Huggins may have bladed his body, Kased testified that the blading only resulted in Huggins turning away from Kased's line of vision at "one point." (1T 24-8 to 16) And this was done while Kased was standing next to the passenger door and Huggins. Therefore, there was nothing "unknown" about Huggins's movements. If anything, Huggins's movements likely were more attributable to the anxiety one may feel when being confronted with continuous questioning from a law enforcement officer.

Kased also testified that his experience with fanny packs in combination with the fact that the "lighting of the area was poor" led him to believe that his safety was at risk because prior to this stop, Kased once arrested someone who had a firearm located in a fanny pack. (1T 22-15 to 22, 27-23 to 28-6) However, such generalization regarding fanny packs cannot satisfy the heightened caution necessary to ask a passenger out of a vehicle. For instance, in Scriven, the Court held that an officer's stop of a vehicle using high beams because the officer "encountered stolen cars using high beams" was unreasonable because "[t]hat generalization, standing alone, would justify the stop of any car using high beams at nighttime in an urban setting." 226 N.J. at 37. The Court went onto state that "[t]he suspicion necessary to justify a stop must not only be reasonable, but also particularized." Ibid. Though the heightened caution standard is a lesser standard than the reasonable suspicion standard, an officer still must point to

"specific and articulable facts" that justify the need to exercise heightened caution. Smith, 134 N.J. at 618. A generalization that fanny packs contain weapons would justify asking any passenger out of vehicle who is wearing a fanny pack without a need to cite to any specific facts that caused the officer to fear for his safety and exercise heightened caution.

Huggins's actions did not give rise to a need to exercise heightened caution and request Huggins as the passenger out of the vehicle. Thus, Huggins's constitutional rights were violated again, and the evidence obtained from the unlawful seizure must be suppressed.

D. The Officers Unlawfully Attempted To Conduct A Pat Down Of Defendant.

Lastly, the officers once more violated Huggins's rights when Kased attempted to conduct a pat-down of Huggins without the necessary reasonable suspicion that Huggins was armed and dangerous. An officer may conduct a reasonable warrantless pat-down or "frisk" when the officer "has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest." Lund, 119 N.J. at 39 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). A court must consider "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Ibid. Reasonableness is measured by whether an officer's belief that an individual is armed and dangerous is based on

"specific and articulable facts," not "inchoate and unparticularized suspicion or [a] hunch." State v. Privott, 203 N.J. 16, 29 (2010). Only in "some cases" will the facts that permitted an officer to order a passenger out of a vehicle, also justify a pat-down of the passenger. Smith, 134 N.J. at 620. Importantly, "mere furtive gestures of an occupant of an automobile do not give rise to an articulable suspicion suggesting" a person is armed. Lund, 119 N.J. at 47. Only "[n]ervousness and furtive gestures may, in conjunction with other objective facts, justify a Terry search." Ibid.

Here, the same observations Kased utilized to justify asking Huggins out of the vehicle were used to justify the attempted pat-down of Huggins. Even if this Court finds that the circumstances Kased testified to justify the "heightened caution" needed to request Huggins out of the vehicle, they cannot justify the subsequent pat-down. In his testimony Kased stated, "[a]fter multiple furtive movements . . . I asked [Huggins] to step out – outside the vehicle so I could conduct a frisk of weapons." (1T 25-22 to 26-11) But in Lund, the Court found the vehicle's occupants' "nervousness and furtive gestures," including the driver reaching toward the back seat, did not "establish a specific particularized basis for an objectively reasonable belief that the defendants were armed and dangerous." 119 N.J. at 41, 47-48. The Court found that this is so because it is common for drivers and passengers to be nervous when a police officer

approaches a vehicle – thus there must be particular circumstances that an officer observes that would lead him to believe a person is armed and dangerous, beyond nervous behavior. Ibid. Kased's observations of Huggins's "furtive movements" were not particularized and do not provide an objectively reasonable basis that Huggins was armed and dangerous. Kased's testimony establishes, at most, that Huggins was nervous; it did not provide particularized facts for why Huggins's nervousness led Kased to believe Huggins was armed.

Further, as highlighted above, Kased's experience with fanny packs cannot be the catalyst that ripens Kased's "hunch" into reasonable suspicion that Huggins was armed, even in combination with the furtive gestures, because it would give officers a justifiable reason to frisk any individual wearing a fanny pack. Again, as highlighted in Scriven, such generalized suspicion is not particularized and not specific to the circumstances presented. 226 N.J. at 37. To effectively ripen Kased's hunch into reasonable suspicion, Kased would need to have provided particularized, specific and articulable facts regarding why observing a fanny pack on Huggins caused him to fear that Huggins was actually armed and dangerous. Anything less can only be categorized as an unparticularized hunch. Thus, the State failed to establish that Kased had a reasonable suspicion that Huggins was armed and dangerous, thus all evidence obtained following the attempted pat-down of Huggins must be suppressed.

E. The Exclusionary Rule Demands The Evidence Seized From Defendant As A Result Of The Illegal Stop And Seizure Be Suppressed.

The officers violated Huggins's constitutional right to be free from unreasonable searches and seizures multiple times when they stopped the vehicle Huggins was traveling in as a passenger. In addition to these violations, the officers' conduct throughout the traffic stop reveals that the investigation into Huggins was either explicitly or implicitly racially motivated. Such extensive misconduct cannot be overlooked, and thus all evidence seized from Huggins as a result of any of these constitutional violations must be suppressed, including the firearm and the controlled dangerous substances (CDS).[8]

The exclusionary rule bars the State from "introducing into evidence the fruits of an unlawful search or seizure by the police." State v. Williams, 192 N.J. 1, 14 (2007). The primary goal of the exclusionary rule is to deter police from engaging in unconstitutional conduct "by denying the prosecution the spoils of

[8] The State argued in the alternative that Huggins abandoned the firearm and thus it cannot be subject to suppression. (2T 6-16 to 7-3) The trial court found that Huggins removed the fanny pack with the firearm inside during the struggle that ensued as a result of Kased's attempted pat-down of Huggins. (Da 5-14) Such action cannot be considered abandonment, and the firearm must still be subject to suppression. In State v. Casimono, the Appellate Division held that evidence thrown in "direct response" to an illegal pat down must be suppressed. 250 N.J. Super. 173, 186 (App. Div. 1991). Here, if Huggins did indeed throw the fanny pack, it was in direct response to the officer's illegal pat down and thus is not considered abandoned and must still be suppressed.

constitutional violations." State v. Shaw, 213 N.J. 398, 413 (2012). The exclusionary rule, however, will not apply when "the connection between the unconstitutional police action and the evidence becomes so attenuated as to dissipate the taint from the unlawful conduct." Williams, 192 N.J. at 15.

A court must determine whether discovered evidence is sufficiently attenuated from unlawful police conduct on a case-by-case basis utilizing three factors: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Ibid.; see also State v. Williams, 410 N.J. Super. 549, 560 (App. Div. 2009). In weighing the factors, a court may find one factor to be determinative in deciding whether or not sufficient attenuation exists. See Shaw, 213 N.J. at 421-22 (finding the flagrant police misconduct factor to weigh "most heavily against the State" and thus be the determinative factor in deciding that the evidence seized in the matter must be suppressed). Here, all three factors bar a finding of attenuation.

First, the temporal proximity factor weighs in Huggins's favor for both the discovery of the firearm and the CDS. The State conceded during its oral argument that this factor weighs in favor of Huggins as to the firearm. (2T 5-24 to 6-6) But this factor also weighs in favor of Huggins as to the CDS discovered on him during processing and intake at the jail. (Da 7, 17-18) The New Jersey

Supreme Court has acknowledged that "state and federal courts have applied the 'fruits' doctrine to exclude evidence after lengthy detentions." State v. Johnson, 118 N.J. 639, 654 (1990). The CDS was discovered close in time to the illegal seizure of Huggins because they were discovered during Huggins's detention following his arrest at processing and intake. (Da 7, 17-18) Thus, the taint from Huggins's unlawful seizure had not dissipated when the CDS were found.

Next, Huggins's flight from the unlawful police action does not constitute an intervening circumstance that attenuates the police's unlawful conduct from the discovery of the evidence. The New Jersey Supreme Court has held that when a defendant resists arrest, it constitutes an intervening act that attenuates the illegal police action from the evidence discovered because holding otherwise would incentivize individuals to "endanger the police . . . by not submitting to official authority." [Marcellus R.] Williams, 192 N.J. at 16-18. Therefore, the reason for finding attenuation under these circumstances is to protect police and the public. [Robert E.] Williams, 410 N.J. Super. at 563. In comparison, in [Robert E.] Williams, this Court found an intervening act did not exist to attenuate the circumstances when the defendant did not submit to a command to stop and fled from police because the "defendant did not force the officers to engage in a lengthy and dangerous pursuit to apprehend him or engage in any act of physical aggression" against the officers. Ibid. This Court highlighted that

it was the officers that "physically accosted [the] defendant by grabbing him on his bicycle," and thus suppressed the evidence discovered. Id. at 563-64.

Here, Huggins did indeed submit to Kased's authority when he exited the vehicle. (1T 31-2 to 8) Though Kased alleges Huggins reached toward his fanny pack, a review of Giordano's BWC shows that Huggins's hands remained in view upon exiting the vehicle. (1T 30-18 to 23, Da 43 04:10-05:50) Notably, the trial court did not make any factual findings regarding how Huggins exited the vehicle and whether or not he reached for his fanny pack. (Da 5-14) It was Kased who then "grabbed" Huggins's hands and placed them against the vehicle. (1T 30-18 to 23, Da 43 04:50-05:20) Kased is the one who became physical with Huggins initially. Then, fearing for his safety, Huggins fled.

There is no dispute that the public should not be incentivized to resist or flee from officers, however, there are exceptions to this rule as presented in [Robert E.] Williams. When, such as here, the individual does indeed initially submit to police authority, but the officer creates a hostile environment, the individual should not be expected to just submit to potential injury. Though ensuring officer and public safety is necessary, there must be concern for a defendant's safety in these circumstances as well.[9] Huggins's understandable

[9] See, e.g., United States Department of Justice Civil Rights Division & United States Attorney's Office District of New Jersey, Investigation of the City of Trenton and the Trenton Police Department (2024),

flight from Kased's use of force should not be considered an intervening circumstance that would allow the admission of the evidence.

However, even if this Court finds that Huggins's flight did constitute an intervening circumstance, the officers engaged in such flagrant misconduct that this factor is determinative, and suppression is required. The State cannot show that the series of unlawful police acts were attenuated from the discovery of the evidence. Flagrant and purposeful police misconduct is evident where the officer's misconduct is "obvious or the official knew, at the time, that his conduct was likely unconstitutional but engaged in it nevertheless" or where the police's actions were investigatory by design and done "in the hope that something might turn up." United States v. Simpson, 439 F. 3d 490, 496 (8th Cir. 2006) (quoting Brown v. Illinois, 422 U.S. 590, 605 (1975)). Flagrancy does

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https://www.justice.gov/d9/2024-11/findings_report_-_investigation_of_the_city_of_trenton_and_trenton_police_department.pdf (finding Trenton Police Department (TPD) "officers frequently use force that violates the Fourth Amendment. TPD officers rapidly escalate everyday interactions, resorting to unreasonable force without giving people a chance to comply with orders. TPD officers use unreasonable physical force where they face little or no threat or resistance."); United States Department of Justice Civil Rights Division & United States Attorney's Office District of New Jersey, Investigation of the Newark Police Department (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf (finding after a review of reported use of excessive force cases, that Newark Police Department (NPD) "officers escalate common policing situations, in which force should be unnecessary or relatively minimal, to situations in which they use significant force, sometimes unreasonably.")

not exist where an officer mistakenly engages in an unconstitutional stop or seizure but acts in good faith; an officer who acts in bad faith, however, engages in flagrant police misconduct. Williams, 192 N.J. at 16.

Here, the officers' flagrant misconduct requires suppression of both the firearm and CDS discovered as a result of Huggins's arrest because (1) the officers disregarded Huggins's constitutional right to be free from unreasonable search and seizure multiple times during the traffic stop and (2) the officers' conduct reveal that the unauthorized investigation into Huggins was either explicitly or implicitly racially motivated. First, as discussed in detail in Points I.A-I.D, the officers engaged in extensive misconduct when they violated Huggins's constitutional rights multiple times, and such conduct must be deterred through the exclusion of the evidence discovered.

Next, the evidence in the record suggests that the prolonged traffic stop was either explicitly or implicitly racially motivated. In fact, defense counsel argued at the suppression hearing that Kased racially profiled Huggins and prolonged the stop as a result. (2T 10-13 to 11-15) Our jurisprudence establishes that police cannot engage in selective law enforcement based on race. See State v. Nyema, 249 N.J. 509, 532 (2022) (holding that "a generic description that encompasses each and every man belonging to a particular race cannot, without more, meet the constitutional threshold of individualized reasonable

suspicion"); State v. Maryland, 167 N.J. 471, 485 (2001) (holding that a search or investigatory stop cannot be "predicated solely on race"); State v. Segars, 172 N.J. 481, 493 (2002) (holding that "if race is the sole motivation underlying the use of a[] [Mobile Data Terminal], it is illegal and the evidence resulting from a subsequent stop must be suppressed"). Indeed the New Jersey Court Supreme Court has emphasized that "[t]he rationales that support the suppression of evidence under Article I, paragraph 7, namely, deterrence of impermissible investigatory behavior and maintenance of the integrity of the judicial system, apply equally, if not more so, to cases of racial targeting." Segars, 172 N.J. at 493. Further, not only has the Court made efforts to eliminate instances of explicit racial targeting, but it has also emphasized the need to protect individuals from implicit bias. State v. Andujar, 247 N.J. 275, 303 (2021) (emphasizing "[i]t is important for the New Jersey Judiciary to focus with care on issues related to implicit bias," recognizing "that implicit bias is no less real and no less problematic than intentional bias").

Multiple jurisdictions have gone to great lengths to protect citizens from race-based stops, including going so far as to depart from Whren v. United States, 517 U.S. 806, 813-14 (1996) where the United States Supreme Court held that if a traffic code is violated, then probable cause exists to stop a vehicle, regardless of the officers' subjective motivations under the Fourth Amendment.

See, e.g., State v. Ochoa, 206 P.3d 143, 150, 155-56 (N.M. Ct. App. 2008) (finding that the "extensive regulation of all manner of driving subjects virtually all drivers to the whim of officers who choose to selectively enforce the traffic code for improper purposes," and thus holding that pretextual traffic stops were unconstitutional); State v. Arreola, 290 P.3d 983, 990-91 (Wash. 2012) (holding that purely pretextual stops are unconstitutional and emphasizing that pretextual stops disturb "private affairs without valid justification" and allow "constitutionally infirm" reasons for a traffic stop "such as a mere hunch regarding other criminal activity . . . or due to bias against the suspect, whether explicit or implicit"); see also United States v. Weaver, 9 F.4th 129, 158-59 (2d Cir. 2021) (Lohier, Jr., J., concurring) (discussing that Whren should be revisited, because "[a]s a practical matter" it has "unfortunately given police officers a green light to make pretextual stops based on racial profiling"); id. at 170-71 (Pooler, J. dissenting) (noting that Whren "continues to have unjustifiably tragic consequences" and "[p]retextual traffic stops disproportionately target people of color, increase the dangers to drivers and passengers, and fail to have a deterrent effect on serious crime").

While this Court does not need to abolish all pretextual stops in this case, these decisions from other states add additional support to New Jersey's existing law barring stops that are based on a defendant's race. And here, as trial counsel

argued, the officers' actions indicate that they engaged in selective enforcement of the law either based explicitly or implicitly on racial bias. Kased testified that he was planning to stop the vehicle for "impeding the flow of traffic," yet instead of activating his lights and pulling up behind the already parked vehicle, he drove up next to it and engaged in an unrecorded conversation with the driver. (1T 14-25 to 15-12, 17-2 to 5, 18-10 to 19-10, 66-17 to 20, 67-6 to 68-7) These facts, along with Kased's failure to turn on his BWC during this initial interaction calls into question whether he actually planned to conduct a formal traffic stop because normal police procedures were not followed. The driver testified that during the unrecorded conversation Kased at first told him that he was free to go. (1T 111-1 to 14) But then Kased noticed Huggins, a Black man, in the vehicle and only then chose to investigate further. (1T 16-11 to 17-1, 111-1 to 14) Not only did Kased decide to escalate, or at least continue, the traffic stop after noticing Huggins, he then selectively chose to investigate Huggins, who is Black, rather than the driver, who is white, even though it was the driver's alleged traffic violations that initiated the stop. (1T 11-22 to 12-1, 14-25 to 15-12, 75-15 to 76-21, 77-15 to 20)

Kased then purposefully began to ask Huggins targeted, invasive questions regarding his ability to afford his shoes, his arrest history, and whether he was in possession of anything illegal – questions not asked of the driver or

having any relation to the stop. (1T 75-15 to 76-21, 78-3 to 79-4, 81-6 to 8) These questions were clearly asked "in the hope that something might turn up" and were initiated either based on explicit or implicit racial bias. Simpson, 439 F. 3d at 496 (quoting Brown, 422 U.S. at 605). For example, Kased asking the Black passenger when he was last arrested but not the white driver evinces at minimum implicit bias. See Andujar, 247 N.J. at 283-84 (noting that the Court could not "ignore the evidence of implicit bias" in the prosecution's decision to run a criminal background check on a Black prospective juror, when no other jurors were similarly investigated). This evidence supports trial counsel's position that the investigation into Huggins was explicitly or implicitly racially motivated, and such flagrant misconduct cannot be condoned by admitting the evidence discovered as a result of the stop.

Thus, the firearm and the CDS seized from Huggins must be subject to the exclusionary rule and suppressed because the evidence was not attenuated from the taint of the officers' flagrant misconduct. The purpose of the exclusionary rule is to deter police misconduct, and such purpose must be effectuated here. If the evidence is suppressed, Huggins's convictions must be reversed.

POINT II

THE PROSECUTOR MADE MULTIPLE IMPROPER REMARKS DURING SUMMATION THAT AMOUNTED TO PROSECUTORIAL

MISCONDUCT THAT DEPRIVED DEFENDANT OF A FAIR TRIAL. (Not raised below)

Huggins's main defense at trial was that Officer Kased lacked credibility and thus the jury should not believe his testimony, including his allegation that Huggins threw the fanny pack containing the firearm over the fence. (9T 52-16 to 59-5, 60-13 to 63-18, 64-21 to 66-9, 67-3 to 12) But the jury was unable to fairly evaluate the merits of Huggins's defense because, during summation, the prosecutor engaged in improper burden-shifting and defied an order from the trial court. These inappropriate actions deprived Huggins of his rights to due process and a fair trial and require reversal of his convictions. U.S. Const. amends. VI and XIV; N.J. Const. art. I, pars. 1, 9, and 10; R. 2:10-2.

A prosecutor's role at trial is to ensure "that justice is done" while "the accused is treated fairly." State v. Williams, 244 N.J. 592, 606-07 (2021). For a conviction to be reversed on appeal, "the prosecutor's misconduct must be 'clearly and unmistakably improper' and 'so egregious' that it deprived defendant of the 'right to have a jury fairly evaluate the merits of his defense.'" State v. Pressley, 232 N.J. 587, 593-94 (2018) (quoting State v. Wakefield, 190 N.J. 397, 437-38 (2018)). And when a prosecutor's misconduct goes unchallenged at trial, the misconduct must be reviewed for plain error, in which reversal will be required if the court finds that the error was "clearly capable of producing an unjust result." Id. at 593 (quoting R. 2:10-2).

First, the prosecution engaged in improper burden-shifting during summation when discussing whether Huggins threw the fanny pack that contained the firearm over the fence. At trial and in summation, defense counsel primarily argued that the jury should not find Kased credible. (9T 52-16 to 59-5, 60-13 to 63-18, 64-21 to 66-9, 67-3 to 12) One main point of contention involved disputing Kased's credibility as to whether the fanny pack discovered on the opposite side of the fence was indeed the fanny pack Huggins was wearing. The defense challenged Kased's testimony that Huggins's threw the fanny pack during the physical altercation with Kased and denied that the fanny pack discovered was ever in Huggins's possession. (9T 60-13 to 63-18) During summation, the prosecutor highlighted the defense's lack of belief in Kased's testimony and stated:

> [b]ut I want you to ask yourselves again does the defendant's theory make sense? If your answer is yes then think about all the other coincidences and certain circumstances that would have to be true in order for that to make any kind of sense. Our witnesses would have to coordinate a lie in order for that to be true. And none of those facts were advanced by the defense. (Indiscernible) no facts to back it up . . . ."
>
> [(9T 71-22 to 72-5) (emphasis added)]

This assertion violated Huggins's right to a fair trial because a defendant never has the responsibility or burden to present or advance any facts. State v. Jones, 364 N.J. Super. 376, 382 (App. Div. 2003). It is "a basic tenet of our

criminal jurisprudence that a defendant has no obligation to establish his innocence." Ibid. He does not have the responsibility to assume the stand to testify or to proffer "affirmative evidence on his own behalf." Ibid. Most importantly, a defendant's choice to not do either "cannot affect a jury's deliberations." Ibid. Thus, a prosecutor's comment on a defendant's decision not to produce affirmative evidence at trial is improper. Here, it was not Huggins's burden to prove that he did not possess the fanny pack with the firearm, rather it was the State's sole responsibility to prove that he did. Such prosecutorial misconduct constitutes plain error because any comment on Huggins's inability to prove his version of events can lead a jury to believe that the burden to prove innocence is on the defendant, which violates the basic tenet of criminal jurisprudence and is thus clearly capable of producing an unjust result. Jones, 364 N.J. Super. at 382; R. 2:10-2.

Second, the prosecutor violated a clear court directive when the prosecutor sua sponte instructed the jury to not "debate the legality of the traffic stop." (9T 73-18 to 19) Prior to summations and jury instructions, the State requested that the trial judge instruct the jury that it not consider the legality of the stop during deliberations. (8T 54-23 to 55-6) Defense counsel opposed the instruction arguing it was inappropriate because it would mislead the jury into believing that they cannot consider the facts underlying the traffic stop. (8T 55-12 to 23)

The trial court agreed with defense counsel and denied the State's request, first expressing concern that such instruction would amount to "a direction not to consider the initial . . . encounter with the defendant in general." (8T 56-3 to 8) Then, the trial court acknowledged that the State was essentially asking the trial court to tell the jury that the trial court already ruled on a suppression motion, which the trial court refused to do. (8T 56-24 to 57-12) Despite the trial court's firm denial of the prosecutor's request, the prosecutor instructed the jury to not consider the legality of the stop in summation. (8T 60-21 to 23, 9T 73-14 to 19) More specifically, the prosecutor stated "[y]ou don't have to personally like all the witnesses that you heard testify, you may even think that the traffic stop was inappropriate. But don't let that distract you. This isn't a popularity contest. You're not going to debate the legality of the traffic stop, no." (9T 73-14 to 19)

Such defiance of a court order that goes to a defendant's central defense constitutes prosecutorial misconduct and requires reversal. As stated previously, Huggins's main defense was that Kased lacked credibility, and the defense was furthered by continuously challenging Kased's testimony regarding what occurred during the traffic stop. Though the legality of the traffic stop was indeed not at issue, the factual circumstances surrounding the stop were the central focus of the trial. And the trial judge was correct in determining that an instruction to the jury to not consider the legality of the traffic stop would

prejudicially mislead the jury into believing they could not consider the traffic stop at all during deliberations. Yet, despite the court's decision, the prosecutor instructed the jury on such anyway in summation. Such instruction deprived Huggins of the "right to have a jury fairly evaluate the merits of his defense.'" Pressley, 232 N.J. at 594 (quoting Wakefield, 190 N.J. at 437-38). This error must constitute plain error because the jury was misled into believing that it cannot consider the circumstances surrounding the traffic stop, a central component of Huggins's defense. Such error is clearly capable of producing an unjust result. R. 2:10-2.

The prosecutor's multiple instances of misconduct, separately or in the aggregate, deprived Huggins of his rights to due process and a fair trial and require reversal of his convictions. U.S. Const. amends. VI and XIV; N.J. Const. art. I, pars. 1, 9, and 10. Additionally, if reversal is ordered, Huggins should be allowed to withdraw his subsequent guilty plea to count two of the indictment, the second-degree certain persons not to have a weapon charge. (10T 20-5 to 28-2; Da 28-33) This Court has determined that a defendant should be allowed to withdraw a guilty plea entered as a result of a mistaken legal ruling or unfair procedure. State v. Hager, 462 N.J. Super. 377, 388-89 (App. Div. 2020). In Hager, the defendant was convicted of resisting arrest and then entered a plea to a severed gun charge. Id. at 380-81. This Court reversed the resisting arrest

conviction based on an evidentiary error and vacated the separate guilty plea because it "accept[ed the] defendant's representation" on appeal that the improper ruling "led directly" to his plea. Id. 388-89.

The same remedy is needed here because it was only after Huggins was convicted of the second-degree unlawful possession of a firearm charge that he pleaded guilty to the certain persons offense in the same indictment. (10T 20-5 to 28-2) This demonstrates, and Huggins now represents, that he would not have pled guilty in exchange for a five-year sentence with five years of parole ineligibility, to run concurrent with his trial sentence, if he had not already been facing a mandatory minimum term of five years as a result of the unlawful possession of firearm charge following a flawed trial. Thus, Huggins should be permitted to withdraw his guilty plea if his trial convictions are reversed.

POINT III

DEFENDANT WAS DEPRIVED OF DUE PROCESS AND A FAIR TRIAL WHEN THE UNCHARGED ACT OF ALLEGED FENTANYL POSSESSION WAS ADMITTED AT TRIAL. (Not raised below)

Huggins was deprived of a fair trial when evidence that he allegedly possessed fentanyl was admitted at trial. Huggins was specifically indicted for possessing cocaine and heroin, not fentanyl. (Da 1-4) Yet, the State's expert witness, Natalia Platosz, repeatedly testified that when testing the substances

recovered from Huggins, multiple substances tested positive for fentanyl as well. (9T 28-11 to 29-9) This evidence was inadmissible because it was sheer propensity evidence that served no legitimate evidentiary purpose pursuant to N.J.R.E. 404(b). The admission of such evidence had the clear capacity to inflame the jury, and created a substantial risk that the jury would convict because of its belief that Huggins is a "bad person." Because the erroneous admission of the other-crimes evidence deprived Huggins of due process and fair trial, reversal of his convictions is required. U.S. Const. amends. VI, XIV; N.J. Const. art. 1, ¶¶ 1, 9, 10.

N.J.R.E. 404(b) sharply limits the admission of evidence of other crimes or wrongs. State v. Carlucci, 217 N.J. 129, 140 (2014). This is so because there is an "underlying danger of admitting other-crime evidence," since "the jury may convict the defendant because he is a 'bad' person in general." State v. Cofield, 127 N.J. 328, 336 (1992). To make certain that such evidence will be used only for appropriate, limited purposes and not to demonstrate the defendant's propensity to commit crime, Cofield set out a four-pronged test for the admissibility of evidence under N.J.R.E. 404(b): the other-crime evidence must be (1) "relevant to a material issue"; (2) "similar in kind and reasonably close in time to the offense charged"; (3) clear and convincing and; (4) "[t]he probative value of the evidence must not be outweighed by its apparent

prejudice." Id. at 338. When a trial court does not engage in a Cofield analysis, then an appellate court must engage in de novo review to determine whether other-crimes evidence was properly admitted. State v. Rose, 206 N.J. 141, 157-58 (2011). If an appellate court then determines the other-crimes evidence was inadmissible, but no objection was made, then a court will review the admission of such evidence for plain error. Ibid.

In this case, evidence of the uncharged bad act – Huggins's alleged fentanyl possession – fails the first and fourth Cofield prongs. To satisfy the first prong of the Cofield test, the evidence must be relevant and concern a material issue in dispute. 127 N.J. at 338. Huggins was not indicted with fentanyl possession. (Da 1-4) Therefore, whether the substances evaluated tested positive for fentanyl was not in dispute and did not tend to prove whether Huggins possessed cocaine or heroin the night he was arrested.

As to the fourth prong of the Cofield test, here, Huggins's alleged fentanyl possession on the evening he was arrested has no probative value as he was not charged with and did not go to trial on any fentanyl-related crimes. But the introduction of such evidence was extremely unfairly prejudicial, because it had the ability to inflame the jury and turn the jury against Huggins. See State v. Reddish, 181 N.J. 553, 608 (2004) (noting that "other-crime evidence has a unique tendency to turn a jury against the defendant" (quoting State v. Stevens,

115 N.J. 289, 302 (1989))); State v. Gibbons, 105 N.J. 67, 77 (1987) ("[t]he danger exists that a jury, aware of other-crimes evidence, may convict a defendant not on the evidence of the specific crime at issue but because of the perception that the defendant is a 'bad' person in general."). Fentanyl is a dangerous drug that has taken over the news for years due to the ongoing opioid epidemic.[10] Any suggestion from evidence introduced at trial that Huggins may have possessed fentanyl the same evening of the indicted offenses clearly had the capacity to spark the passions of the jury due to fentanyl's dangerous reputation and turn the jury against Huggins because of a belief that he is a bad person due to the alleged fentanyl possession.

Alternatively, if this Court finds that the fentanyl evidence was admissible, it must still find that Huggins did not receive a fair trial because the trial court did not provide any limiting instruction with regard to the other-crime evidence. When other-crime evidence is admissible "a trial court must explain to the jury the limited purpose for which the other-crimes evidence is being

[10] See, e.g., Julie Wernau, What is Fentanyl and Why is it So Dangerous?, Wall St. J. (Jan. 3, 2024, 2:58 P.M.), https://www.wsj.com/health/healthcare/what-is-fentanyl-drug-opioid-health-safety-explained-11658341650; Noah Weiland & Margot Sanger-Katz, Overdose Deaths Continue Rising, With Fentanyl and Meth Key Culprits, N.Y. Times (May 11, 2022), https://www.nytimes.com/2022/05/11/us/politics/overdose-deaths-fentanyl-meth.html?unlocked_article_code=1.7U4.JuO7.UztB5BS5rM6C&smid=url-share.

offered." State v. Gillispie, 208 N.J. 59, 92 (2011). Such instruction must be given when the evidence is admitted and in the final jury instructions. Id. at 93. The limiting instruction is necessary because other-crime evidence is "inherently prejudicial," therefore trial courts must carefully provide an instruction that enables the "jury to comprehend and appreciate the fine distinction to which it is required to adhere." Id. at 92. Here, no instruction was provided when the evidence was admitted at trial or during the final jury charge. (9T 28-13 to 32-14; 82-14 to 124-17) As a result, the jury was given free rein to use the highly prejudicial evidence in its decision, which was clearly capable of producing an unjust result.

In sum, the other-crime evidence in this case does not satisfy the Cofield test, and reversal of Huggins's convictions is required because the admission of uncharged alleged conduct of this nature clearly has the capacity to produce an unjust result. Huggins should also be provided the opportunity to withdraw his guilty plea for the certain persons offense for the reasons outlined in Point II.

POINT IV

DEFENDANT'S SENTENCE IS EXCESSIVE AND MUST BE VACATED AND REMANDED FOR RESENTENCING. (11T 13-9 to 18-24; Da 34-37)

At sentencing, the court granted the State's motion for a mandatory extended term pursuant to N.J.S.A. 2C:43-6(c) and N.J.S.A. 2C:43-7(c) on the

unlawful possession of a weapon conviction and sentenced Huggins to twelve years with six years of parole ineligibility. (11T 5-25 to 6-10, 17-12 to 18-3; Da 34-37) In imposing this sentence, the court found aggravating factors 3, the likelihood of re-offense, 6, the defendant's criminal history, and 9, the need to deter. N.J.S.A. 2C:44-1(a)(3), (6), (9); (11T 16-3 to 13). The court also found that mitigating factor 2 applied, defendant did not contemplate that the defendant's conduct would cause or threaten serious harm. N.J.S.A. 2C:44-1(b)(2); (11T 16-22 to 17-5) Huggins's sentence is excessive because the court failed to also apply mitigating factor 1, defendant's conduct neither caused nor threatened serious harm, when weighing the aggravating and mitigating factors. N.J.S.A. 2C:44-1(b)(1).

When imposing a sentence, a court must consider the applicability of the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1. A court must "identify the aggravating and mitigating factors and balance them to arrive at a fair sentence." State v. Natale, 184 N.J. 458, 488 (2005). The "finding of any factor must be supported by competent, credible evidence in the record." State v. Case, 220 N.J. 49, 64 (2014). A remand for resentencing is required when the trial court fails to find mitigating factors supported by the evidence. State v. Dalziel, 182 N.J. 494, 504-05 (2005). Here, the court failed to find mitigating factor 1. N.J.S.A. 2C:44-1(b)(1). Huggins was solely convicted of possession-

related offenses. (10T 16-8 to 17-17; Da 26-27) Everything discovered on or near Huggins, was stored away and not actively in use, and there is no evidence that Huggins ever caused or threatened to cause serious harm with the evidence found in his possession. See State v. Cullen, 351 N.J. Super. 505, 511 (App. Div. 2002) (finding that the defendant's possession of cocaine conviction "neither caused nor threatened serious harm" and concluding as a result that mitigating factor 1 should have been given substantial weight at sentencing). Indeed, the trial court found that mitigating factor two applied because Huggins "did not contemplate his conduct would cause serious harm." (11T 16-22 to 17-5)

Furthermore, though a firearm has the capacity to cause serious harm, it is not proper for a trial judge to focus on what could have happened; rather the court must focus on the facts and circumstances surrounding what actually happened. In State v. Molina, the New Jersey Supreme Court found the trial court's reasoning behind denying the application of mitigating factor 1 was flawed. 114 N.J. 181, 185 (1989). After the defendant was convicted for the possession of cocaine, the trial court rejected applying mitigating factor 1, reasoning that individuals under the influence of drugs often "commit very serious and heinous crimes." Ibid. The Court found that nothing in the record supported this reasoning and emphasized that a sentencing court must "be guided by the facts surrounding the defendant's offense" Ibid. Here, the facts in

this case do not support a finding that Huggins was going to use the firearm to cause or threaten to cause serious harm. In fact, the firearm was located in a closed fanny pack, away from Huggins. (7T 123-7 to 23) Thus, this Court should vacate the sentence and remand for resentencing so that the trial court can properly consider mitigating factor 1 in its sentencing decision.

CONCLUSION

For the reasons set out in Point I, the evidence seized during the unlawful stop and seizure of Huggins must be suppressed and Huggins's convictions must be reversed. In the alternative, for the reasons set out in Points II and III, Huggins's trial convictions should be reversed and Huggins should be permitted to withdraw his guilty plea to the certain persons offense. Lastly, should this Court uphold Huggins's convictions, the matter should be remanded for resentencing for the reasons given in Point IV.

Respectfully submitted,

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ALEXANDRA MAREK
Assistant Deputy Public Defender

Dated: April 16, 2025

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
	:	
Plaintiff-Respondent,	:	**Appeal From a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Hudson County**
	:	
	:	**DOCKET NO. A-0673-23**
-v-	:	
	:	**INDICTMENT NO.: 21-08-0685-I**
	:	
	:	**SAT BELOW:**
SHAQUIL HUGGINS,	:	**Hon. Angelo Servidio, J.S.C.**
	:	
Defendant-Appellant,	:	**Dated: June 30, 2025**

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PROCEDURAL HISTORY

The State adopts the procedural history as set forth in defendant Shaquil Huggins's ("defendant") April 16, 2025 brief and additionally adds the following:

On July 25, 2023, the State moved for the imposition of an extended term.

At sentencing, the trial court granted the State's motion and accordingly sentenced defendant to a mandatory extended term of twelve years in New Jersey State Prison ("NJSP") with a six-year-parole-ineligibility-period as to the unlawful possession of a handgun without a permit charge, concurrent to the sentences imposed for the other counts. (11T 17:12 to 18:3; Da34).[1]

Defendant appeals.

COUNTER-STATEMENT OF FACTS

A. The Motion to Suppress

The following facts are adduced from the evidence presented at the motion to suppress:

Bayonne Police Department Police Officer Hany Kased testified he has been a police officer since March 2020 and that his initial position entailed answering calls for assistance and conducting traffic stops. (1T 7:21 to 8:17).

[1] The State adopts the abbreviations used in defendant's brief and additionally designates "Db" to refer to defendant's brief.

At the Police Academy, he received training regarding crimes and Title 39 violations, as well as on how to conduct motor vehicle stops. (1T 9:17-25). He has also conducted approximately 100 to 200 motor vehicle stops. (1T 10:4-13).

At approximately 12:45 a.m. on April 25, 2021, Officer Kased observed a silver Toyota traveling southbound at a low rate of speed on Route 440 around 33rd street. (1T 11:22 to 12:6). The vehicle was traveling slowly enough that other vehicles had to go around it, which was impeding traffic. (1T 12:7-25). Additionally, all four windows of the vehicle were "lightly tinted." (1T 13:1-7). Due to the fact that the vehicle was impeding traffic by driving slowly, Officer Kased followed the vehicle for approximately a minute. (1T 14:16-23).

Before Officer Kased had the opportunity to initiate a motor vehicle stop, the Toyota quickly pulled over to the side of the road around the intersection of 30th Street and Avenue E. (1T 14:24 to 15:4). Officer Kased noted that the vehicle had pulled over into a crosswalk, not a parking space. (1T 18:4-9). Officer Kased then pulled up next to the vehicle and asked the driver why he stopped, to which the driver responded that they were lost. (1T 15:4-12). Officer Kased then activated his overhead lights and exited his marked police vehicle. (1T 11:17-18; 1T 15:7-9). Officer Joseph Giordano, who had been

driving in a marked police vehicle behind Officer Kased, also pulled over and exited his vehicle. (1T 11:5-18; 1T 15:9-10).

Both officers activated their body-worn cameras ("BWC"), and Officer Kased approached the front passenger's window of the Toyota while Officer Giordano approached the driver's window. (1T 15:14-16; Da42; Da43). The driver provided officers his driver's license, insurance, and registration. (1T 19:21-22). Both the driver and the passenger appeared nervous, and the area had low lighting. (1T 19:24 to 20:17). Thus, Officer Kased asked the driver to step out of the vehicle, and the driver complied with the officer's request. (1T 20:19-20; Da42 at 0:00:53 to 0:01:40).

Officer Kased asked the passenger, later identified as defendant, to provide him with his identification because the officer had observed he was not wearing a seatbelt. (1T 21:8-10; Da42 at 0:01:42 to 0:01:47). Defendant complied with the officer's request. (Da42 at 0:02:14 to 0:02:33). Around this point of the stop, Officer Kased observed defendant making "furtive movements." (1T 21:23 to 22:2). Specifically, he observed defendant reach over to the center console to retrieve a lighter, which took his hand out of view. (1T 22:8-14). The officer then asked defendant to stop moving, at which point defendant "bla[d]ed his body with a fanny pack." (1T 22:15-17). Officer Kased

explained that "blading his body" means to turn away from the officer's line of vision. (1T 24:10-16).

Officer Kased further observed defendant's hands were shaking and that he kept touching his fanny pack. (1T 23:22 to 24:6). Based on Officer Kased's observations of defendant's demeanor and furtive movements, including defendant's acts of "blading" his body and continuously touching his fanny pack; his prior experience of arresting someone carrying a firearm inside a fanny pack; the time of night; and the low lighting of the area, Officer Kased asked defendant to step out of the vehicle. (1T 25:20 to 28:6).

Defendant "took his time getting out of the vehicle." (1T 29:20-23; Da42 at 0:04:55 to 0:05:58). Once defendant was out of the vehicle, Officer Kased tried to turn defendant around so he could frisk him. (1T 28:17-23; Da42 at 0:05:57 to 0:06:10). As Officer Kased attempted to do this, he observed defendant's hands "going towards the fanny pack." (1T 30:16-19). Officer Kased then instructed defendant to stop reaching, (Da42 at 0:06:00 to 0:06:25; Da43 at 0:04:53 to 0:05:05), and he grabbed both of defendant's hands out of "fear that he was trying to get something out of that fanny pack," (1T 30:16-22). Defendant then broke out of the officer's hold, took the fanny pack off of his body, and threw it over the fence and into the McCabe Ambulance parking lot. (1T 31:2 to 32:3; Da42 at 0:06:25 to 0:06:30; Da43 at 0:05:15 to 0:05:23).

Officers subsequently arrested defendant and seized the fanny pack from the parking lot. (1T 33:23 to 34:3; 1T 38:18 to 24). Inside the fanny pack was a firearm. (1T 33:23 to 34:3; 1T 42:13-21).

Officers further issued motor vehicle tickets. (1T 53:24 to 54:9). Specifically, one motor vehicle ticket was issued to defendant for not wearing a seatbelt, and two tickets were mailed to the driver. (1T 53:24 to 54:2).

The State moved the fanny pack, a photograph of the fanny pack, the firearm seized, a photograph of the firearm, Officer Kased's BWC, and Officer Giordano's BWC into evidence. (1T 32:18 to 33:9; 1T 37:4 to 38:5; 1T 50:2-24; 1T 50:24-25; 1T 52:9-16; 1T 56:12-23; 1T 60:3-18; 1T 61:5 to 62:7; 1T 131:14).

Defense counsel called the driver, Andrew Marotta, to testify. (1T 108:1-2). He testified that when the police officer initially pulled up next to his vehicle, he said he was free to go but then changed his mind after seeing defendant. (1T 111:6-17). The driver further testified defendant was calm and relaxed during the police interaction. (1T 113:2-5). Although the driver denied seeing defendant moving around while speaking to the officer, he admitted that once he was asked to step out of the vehicle, he could not see what defendant was doing. (1T 122:11-16).

Following testimony, the trial court heard oral argument. The State argued officers had reasonable and articulable suspicion to believe the driver had committed the motor vehicle offense of driving so slowly that he impeded traffic.[2] (2T 34:10-14). The State further argued officers lawfully asked defendant to exit the vehicle under the heightened-caution standard based on defendant's hand movements, nervousness, and their other observations. (2T 4:15 to 5:10). Moreover, the officers' further observations, including defendant's slow exit from the vehicle, permitted the officers to conduct a pat down of defendant. (2T 5:8-17). Finally, the State argued that once defendant threw the fanny pack, he had abandoned it, thus allowing officers to lawfully seize it. (2T 6:18 to 7:8).

Defense counsel argued that although she was "not disputing that [the driver] couldn't have been stopped because of the motor vehicle infraction," (2T 10:6-7), the questions Officer Kased asked and his determination to pat down defendant were as a result of the officer racially profiling defendant, (2T 10:8 to 12:2). She further contended defendant was calm and that he was not making any furtive movements or hiding his hands; therefore, officers had no basis to

[2] The State further argued that officers had reasonable and articulable suspicion to conduct a motor vehicle stop based on the driver's tinted windows. (2T 4:12-14). The State concedes that Officer's Kased's testimony that the windows were "lightly" tinted does not justify a motor vehicle stop for a tinted windows violation under State v. Smith, 251 N.J. 244, 264-65 (2022).

ask defendant to exit the vehicle and to conduct a pat down. (2T 8:4 to 10:5). She concluded that because officers unlawfully asked defendant to exit the vehicle and unlawfully attempted to conduct a pat down, the evidence seized from defendant must be suppressed. (2T 15:7 to 17:23).

On or about March 28, 2022, the trial court denied defendant's motion to suppress. (Da5-14). In denying the motion, the court found Officer Kased's testimony to be credible, (Da8), but it did not make any credibility findings with regards to the driver, Mr. Marotta. The court found officers validly conducted a motor vehicle stop based on their observations of motor vehicle infractions, including driving substantially below the speed limit prior to the stop and parking in an illegal parking spot prior to officers stopping the vehicle. (Da8-10). The court further found officers lawfully requested defendant to step out of the vehicle based on their observations, including defendant's nervousness, furtive movements, and evasiveness, as well as their experience with fanny packs being used to conceal handguns. (Da12). The court also found the officers' observations and experience gave them articulable and reasonable suspicion warranting them to attempt to conduct a pat down. (Da12-13). Accordingly, the court denied defendant's motion.

B. The Trial

The following facts are adduced from the evidence presented at trial:

At approximately 12:45 a.m. on April 25, 2021, Officers Kased and Giordano were patrolling the area around Route 440 in Bayonne when they observed a white Toyota driving southbound on Route 440 at a slow rate of speed, thus impeding the flow of traffic. (7T 42:5-18; 7T 66:9-25; 7T 68:13-15). Specifically, officers observed the vehicle traveling around fifteen to twenty miles per hour, maybe even slower, in a fifty-five-miles-per-hour zone. (7T 42:19 to 43:7). Based on their observations, officers conducted a motor vehicle stop around the area of 30th Street and Avenue E. (7T 43:18-21; 7T 68:19-22).

After exiting their patrol vehicles, Officer Kased approached the passenger's side of the Toyota, while Officer Giordano approached the driver's side. (7T 44:11-14; 7T 69:14-19). The vehicle had two occupants – the driver, Mr. Marotta, and the front passenger, defendant. (7T 44:11-22; 7T 70:2-6). Officer Kased asked the driver to step out of the vehicle, and the driver complied with his request. (7T 44:16-22; 7T 59:2-5). While Officer Giordano remained near the back of the Toyota with the driver, Officer Kased spoke to defendant. (7T 44:20-22; 7T 72:12-23).

During the course of his interaction with defendant, Officer Kased determined he was going to request defendant to exit the vehicle so he could frisk him for weapons. (7T 72:23 to 73:1). Officer Kased made this

determination based on a variety of reasons, including the fact that defendant would not listen to the officer's commands and kept touching his fanny pack. (7T 72:1-25). Defendant did not exit the vehicle immediately after being instructed to do so, but when defendant finally did exit, Officer Kased advised him to put his hands on top of the vehicle so he could conduct a frisk. (7T 73:6-9; 7T 73:13-16). Defendant did not comply with this request, and he instead pushed away from Officer Kased and threw his fanny pack over a fence. (7T 74:13 to 75:14; 7T 82:25 to 83:15).

Following a "little scuffle" between defendant and the officers, defendant was placed under arrest. (7T 75:11-16). Around this time, other officers, including Officer Kevin Baranok and Officer Eric Schafer, had responded to the area as backup. (7T 121:13 to 122:18; 8T 9:1-11). Upon arriving on scene, Officer Baranok hopped over the fence and retrieved defendant's discarded fanny pack. (7T 122:20 to 123:22; 8T 9:14-22). Inside the fanny pack was a .380 caliber Hi-Point semiautomatic pistol bearing serial number P8120915 loaded with four hollow nose bullets. (7T 123:21 to 124:21; 8T 9:20-22; 8T 12:13-20; 8T 13:3-11; 8T 45:3-18). At the time the handgun was recovered, defendant did not have a permit to purchase a firearm or a permit to carry a handgun. (8T 51:4-19).

Later on, after officers transported defendant to the Bayonne Police Department's Police Headquarters, they conducted a search of defendant and recovered two yellow-capped vials of suspected crack cocaine in his front right pocket. (8T 19:20 to 20:1; 8T 23:4-25). Once defendant was processed by the Bayonne Police Department, he was transported to the Hudson County Department of Corrections in Kearny. (8T 26:24 to 27:1; 8T 27:18-20; 8T 28:15-20). Upon defendant's arrival, a corrections officer conducted a strip search of defendant and recovered thirty-four wax folds of suspected heroin in defendant's underwear. (8T 29:8 to 31:5).

At trial, an expert testified that one of the two yellow-capped vials (which were recovered in defendant's pocket) contained cocaine. (9T 21:10-25). The expert further testified that after testing three different samples from the thirty-four bags containing suspected heroin (which were recovered in defendant's underwear), she determined one of the samples contained heroin and fentanyl, one contained fentanyl, and one contained 4-AMPP, heroin, and fentanyl. (9T 24:24 to 25:2; 9T 28:11 to 29:9). Defense counsel did not object to the expert's testimony.

Additionally, a different expert testified that the handgun recovered from the fanny pack is operable and capable of being discharged. (8T 46:5-8).

After the parties rested, they each gave closing summations. Defense counsel's closing summation focused on the credibility of Officer Kased. (9T 52:16 to 67:12). Defense counsel noted that the officer's testimony did not align with his actions. For example, Officer Kased testified he pulled the vehicle over because he observed it driving slowly on Route 440, but instead of pulling the vehicle over immediately, he followed it for a few blocks. (9T 53:7-17). Defense counsel then pointed out that Officer Kased did not immediately activate his BWC so his initial conversation with the driver was not captured. (9T 53:14-24). Defense counsel commented on Officer Kased's questions to defendant, noting that the kind of sneakers defendant was wearing had nothing to do with him not wearing a seatbelt. (9T 56:3-14).

Defense counsel further stated that the officer's statement that he was going to search the car anyway demonstrated he pulled the car over just to search it. (9T 56:22 to 57:2). Defense counsel claimed Officer Kased was lying to the jury about what he saw and what he did during the motor vehicle stop because his only goal was to search the vehicle. (9T 57:3-24). Defense counsel then noted that after the scuffle between defendant and the officers, it took two minutes before an officer stated defendant threw something over the fence, and yet at no point did the BWC depict defendant throwing something over the fence. (9T 60:13 to 61:10). Defense counsel further suggested that officers planted the

gun and bullets in the bag recovered because the gun "just happens . . . to be loaded with the same bullets that these police officers use when they go to the range." (9T 63:2-18). Defense counsel concluded that after judging Officer Kased's credibility, the jury had no other alternative than to return a not guilty verdict. (9T 66:19 to 67:12).

In response, the assistant prosecutor began his summation by pointing out the white strap with the Champion logo text that is clearly visible on defendant's shoulder in the BWC. (9T 68:3-20). The assistant prosecutor noted that this distinct strap matches the fanny pack recovered by police officers, (9T 68:8-20), and he argued that the fanny pack was not "planted by the police," (9T 71:21-22). Rather, the assistant prosecutor argued, the evidence demonstrates defendant threw the fanny pack over the fence. (9T 72:8-10). In reaching this conclusion, the assistant prosecutor observed that defendant's theory that the fanny pack was planted simply did not make any sense with the evidence elicited at trial. (9T 71:20 to 9T 72:10).

The assistant prosecutor concluded that the jury was not here to debate the legality of the traffic stop. (9T 73:18-19). Rather, the jury was "here to apply the law to the facts and come to a verdict as to the crimes charged." (9T 73:19-21). At no point did defense counsel object to the assistant prosecutor's closing summation. (9T 67:18 to 74:2).

The jury convicted defendant of second-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1); possession of a prohibited device, hollow nose bullet, N.J.S.A. 2C:39-3(f)(1); possession of a controlled dangerous substance ("CDS"), cocaine, N.J.S.A. 2C:35-10(a)(1); and possession of CDS, heroin, N.J.S.A. 2C:35-10(1)(1). (Da26-27; 10T 16:16 to 17:17). The jury further acquitted defendant of resisting arrest, N.J.S.A. 2C:29-2(a)(3), and obstruction of the administration of law, N.J.S.A. 2C:29-1(a). (Da26-27; 10T 16:16 to 17:17).

Following the verdict, defendant pleaded guilty to certain persons not to have a weapon, N.J.S.A. 2C:39-7(b)(1), in exchange for the State's recommendation of five years in NJSP with a five-year-parole-ineligibility-period pursuant to the Graves Act, concurrent to any sentence defendant received for the charges he was convicted of at trial. (Da28-33; 10T 22:23 to 23:2; 10T 26:14 to 27:5).

C. The Sentence

At sentencing, the State argued defendant was subject to a mandatory extended term of imprisonment because he had a prior 2018 Graves Act conviction for aggravated assault – pointing, N.J.S.A. 2C:12-1(b)(4), and he was convicted at trial for the Graves Act offense of unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1). (11T 6:1-10). Defense counsel did

not dispute defendant's eligibility for an extended term, but he asked the court to find mitigating factors two and eight and sentence defendant to the minimum term of ten years with a five-year-parole-ineligibility-period as to the unlawful possession of a handgun without a permit count, concurrent to the sentences imposed on the other counts. (11T 6:20 to 9:22).

The State countered, arguing aggravating factors three, six, and nine applied and that no mitigating factors applied. (11T 10:15 to 12:11). The State asked the court to impose a sixteen-year sentence in NJSP with eight years of parole ineligibility as to the unlawful possession of a handgun without a permit count and asked all sentences to run concurrent. (11T 12:12 to 13:1).

After considering the parties' submissions, defendant's presentence report, and oral argument, the court found aggravating factors three and six applied because defendant had prior convictions, including a prior weapons offense. (11T 14:1 to 16:10). The court also found aggravating factor nine, the need to deter defendant and others from violating the law. (11T 16:10-13). The court rejected a finding of mitigating factor eight given his findings of aggravating factors three and six, but it found mitigating factor two and also noted some of the good things defendant had done in the jail, including getting his G.E.D. (11T 16:14 to 17:5). The court found the aggravating factors

substantially outweighed the mitigating factors and recognized it was required to impose a mandatory extended term under the Graves Act. (11T 17:6-16).

The court noted it could not impose the minimum term of ten years in NJSP with five years of parole ineligibility due to defendant's record and the circumstances of the case, so it imposed twelve years in NJSP with a six-year-parole-ineligibility-period as to the unlawful possession of a handgun without a permit count; five years in NJSP with a five-year-parole-ineligibility-period as to the certain persons count pursuant to the plea agreement; eighteen months in NJSP as to the prohibited weapons count; three years in NJSP as to the possession of heroin count; and three years in NJSP as to the possession of cocaine count. (11T 17:14 to 18:19). The court further ordered that each sentence run concurrently. (Ibid.).

Defendant appeals from the court's order denying his motion to suppress, from his conviction, and from his sentence.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS BECAUSE THE STATE DEMONSTRATED THE MOTOR VEHICLE STOP AND ULTIMATE SEIZURE OF DEFENDANT'S FANNY PACK WAS LAWFUL.

Defendant appeals from the trial court's order denying defendant's motion to suppress. (Db12-37).

When reviewing the grant or denial of a motion to suppress, an appellate court will "uphold the trial court's factual findings underlying that decision 'so long as those findings are supported by sufficient credible evidence in the record.'" State v. Hagans, 233 N.J. 30, 37 (2018) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). Appellate courts "accord deference to those factual findings because they 'are substantially influenced by [an] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Lamb, 218 N.J. 300, 313 (2014) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 244 (2007)).

"An appellate court should not disturb the trial court's findings merely because 'it might have reached a different conclusion were it the trial tribunal' or because 'the trial court decided all evidence or inference conflicts in favor of one side' in a close case." Elders, 192 N.J. at 244 (quoting State v. Johnson, 42

N.J. 146, 162 (1964)). "[A]ppellate courts should reverse only when the trial court's determination is 'so clearly mistaken "that the interests of justice demand intervention and correction."'" Lamb, 218 N.J. at 313 (quoting Elders, 192 N.J. at 244). However, an appellate court reviews a trial court's legal conclusions de novo. Gamble, 218 N.J. at 425.

Here, defendant contends the court erred by denying his motion to suppress for the following reasons: (1) officers did not have a reasonable and articulable basis to conduct a motor vehicle stop; (2) officers unlawfully extended the stop beyond the time needed to complete the stop's mission; (3) officers unlawfully ordered defendant out of the vehicle; (4) officers did not have a reasonable and articulable basis to attempt to conduct a pat down of defendant; and (5) officers' flagrant misconduct warrants suppression of the evidence seized. (Db12-37).

Both the Fourth Amendment of the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution "safeguard the right of all individuals to be secure in their houses against unreasonable searches and seizures." State v. Shaw, 237 N.J. 588, 607-08 (2019); U.S. Const. amend. IV; N.J. Const. art. 1, ¶ 7. Although a warrantless search or seizure is presumptively invalid, "[n]ot all police-citizen encounters constitute searches or seizures for purposes of the warrant requirement. State v. Rosario, 229 N.J. 263, 271 (2017)

(alteration in original) (quoting State v. Rodriguez, 172 N.J. 117, 125 (2002)). Additionally, a search or seizure will be valid when it "falls within one of the few well-delineated exceptions to the warrant requirement." Elders, 192 N.J. at 246 (quoting State v. Pineiro, 181 N.J. 13, 19 (2004)). The State bears the burden of proving "by a preponderance of the evidence that there was no constitutional violation." Pineiro, 181 N.J. at 20 (quoting State v. Wilson, 178 N.J. 7, 13 (2003)).

In this case, the trial court properly denied defendant's motion to suppress. First, officers had a reasonable and articulable basis to conduct a motor vehicle stop based on their observations that the vehicle was traveling at such a low rate of speed that it impeded the normal and reasonable movement of traffic. Second, defendant waived his right to challenge the length of the stop, and, regardless, officers did not unlawfully extend the stop. Third, officers lawfully ordered defendant out of the vehicle under the totality of the circumstances. Fourth, officers had reasonable and articulable suspicion to conduct a pat down of defendant based on their observations, training, and experience. Fifth, officers lawfully seized and searched defendant's fanny pack after he abandoned it by throwing it over the fence. Sixth, defendant has not demonstrated by a preponderance of the evidence that police acted with a discriminatory purpose.

A. Officers Had a Reasonable and Articulable Basis to Conduct a Motor Vehicle Stop Based on Their Observations that the Vehicle Was Traveling at Such a Low Rate of Speed that It Impeded the Normal and Reasonable Movement of Traffic.

Defendant contends the State did not meet its burden of proving officers had a reasonable and articulable basis to conduct a motor vehicle stop. (Db13-17).

"It is firmly established that a police officer is justified in stopping a motor vehicle when he has an articulable and reasonable suspicion that the driver has committed a motor vehicle offense." State v. Locurto, 157 N.J. 463, 470 (1999) (quoting State v. Smith, 306 N.J. Super. 370, 380 (App. Div. 1997)).

Reasonable and articulable suspicion is "neither easily defined nor 'readily, or even usefully, reduced to a neat set of legal rules.'" State v. Stovall, 170 N.J. 346, 356 (2002) (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). It requires "more than an 'inchoate and unparticularized suspicion or hunch,'" but less than "the probable cause necessary to sustain an arrest." Id. at 356-57 (citation omitted). To determine whether an officer has reasonable suspicion, the court must consider whether, under the totality of the circumstances, the officer has "a particularized and objective basis" to believe "the person [detained] is, or is about to be engaged in criminal activity." Pineiro, 181 N.J. at 22 (citations omitted). The facts must be viewed "objectively from the

standpoint of an experienced and knowledgeable police officer." State v. Arthur, 149 N.J. 1, 15 (1997).

Under N.J.S.A. 39:4-97.1, "No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law." Here, Officer Kased testified that he observed a Toyota on Route 440 traveling slowly enough that other vehicles had to go around it, which was impeding traffic. (1T 12:7-25). Officer Kased's testimony, which the trial court found was credible, (see Da8), therefore establishes that he had a reasonable and articulable suspicion to believe, based on his observations that the vehicle was driving slowly enough that it was impeding traffic by causing other vehicles to drive around it, that the driver had committed the motor vehicle offense of blocking traffic by driving at slow speeds, in violation of N.J.S.A. 39:4-97.1. Given that the officer had reasonable and articulable suspicion to believe the driver had committed a motor vehicle offense, he was justified in conducting a motor vehicle stop. See Locurto, 157 N.J. at 470.

State v. Boone, 479 N.J. Super. 193 (App. Div. 2024), does not warrant a different result. There, the detective testified he pulled the defendant over in part because he observed the motor vehicle "crossing the yellow line." Id. at 199. However, when defense counsel further questioned him about the motor

vehicle violation, the detective denied that the vehicle was moving erratically. Id. at 201-02. The detective further indicated the vehicle crossed over the line more than once, but he could not recall any more information regarding the violation and even admitted his inability to better describe the violation was because he had been distracted when following the vehicle. Id. at 202, 209. Under these circumstances, this court found the State had not met its burden of proving the detective had a reasonable and articulable basis to believe the defendant had failed to maintain his lane, in violation of N.J.S.A. 39:88(b). Id. at 210-11.

By contrast, here, Officer Kased testified he observed the vehicle driving slowly enough on Route 440 that it impeded the flow of traffic by causing other vehicles to have to go around it, in violation of N.J.S.A. 39:4-97.1. This testimony is sufficient to establish the officer had a reasonable and articulable suspicion to believe the driver was violating N.J.S.A. 39:4-97.1. And notably, unlike defense counsel in Boone, whose cross-examination centered on the motor vehicle violation, trial counsel in this case stated during oral argument, "I'm not disputing that [the driver] couldn't have been stopped because of the motor vehicle infraction." (2T 10:5-7). Given that defendant conceded the stop was proper, defendant's claim that officers unlawfully stopped the vehicle should be rejected.

B. Defendant's Claim that Officers Unlawfully Extended the Stop Beyond the Time Needed to Complete the Stop's Mission Should Be Deemed as Waived Because Defendant Failed to Raise this Argument Below.

Defendant argues officers unlawfully extended the stop beyond the time needed to complete the purpose of the motor vehicle stop. (Db18-20).

This court should reject this argument because it was not raised below, and the court did not consider the issue. Pursuant to Rule 3:5-7(a), "a person claiming to be aggrieved by an unlawful search and seizure . . . may apply . . . to suppress the evidence." The mere filing of a motion, however, does not require the State to justify every aspect of a warrantless search and seizure. See State v. Witt, 223 N.J. 409, 418 (2015). Rather, a "[d]efendant[] should state the basis for a motion to suppress at the outset to allow for appropriate development of the record." State v. Bacome, 228 N.J. 94, 108 (2017).

"Generally, 'the points of divergence developed in proceedings before a trial court define the metes and bounds of appellate review.'" Witt, 223 N.J. at 419 (quoting State v. Robinson, 200 N.J. 1, 19 (2009)). "For sound jurisprudential reasons, with few exceptions, 'our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available.'" Ibid. (quoting Robinson, 200 N.J. at 20). The reasons for declining to consider such questions or issues are clear: "if late-blooming issues were allowed to be raised for the first time on

appeal, this would be an incentive for game-playing by counsel, for acquiescing through silence when risky rulings are made, and, when they can no longer be corrected at the trial level, unveiling them as new weapons on appeal." Robinson, 200 N.J. at 19 (quoting Frank M. Coffin, On Appeal: Courts, Lawyering, and Judging 84-85 (W.W. Norton & Co. 1994)).

Here, defendant's failure to raise this claim that officers unlawfully extended the stop during the motion to suppress "denied the State the opportunity to confront the claim head-on; it denied the trial court the opportunity to evaluate the claim in an informed and deliberate manner; and it denied any reviewing court the benefit of a robust record within which the claim could be considered." Id. at 21; see also State v. Carrillo, 469 N.J. Super. 318, 337 (App. Div. 2021) (refusing to address the defendant's claim that officers unlawfully prolonged the motor vehicle stop because he did not raise the issue to the trial court). For these reasons, this court should not consider this claim, raised for the first time on appeal.

C. Even if the Argument Is Not Deemed Waived, Officers Did Not Unlawfully Extend the Stop Based on Their Observations During the Stop.

As noted above, defendant contends the officers unreasonably extended the length of the stop by "excessively question[ing]" defendant. (Db18).

"During a lawful traffic stop, a police officer is permitted to 'inquire "into matters unrelated to the justification for the traffic stop,"' and 'may make "ordinary inquiries incident to [the traffic] stop."'" State v. Nelson, 237 N.J. 540, 552 (2019) (alteration in original) (internal citations omitted) (quoting State v. Dunbar, 229 N.J. 521, 533 (2017)). "If, during the course of the stop or as a result of the reasonable inquiries initiated by the officer, the circumstances 'give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" Ibid. (alteration in original) (quoting State v. Dickey, 152 N.J. 468, 479-80 (1998)). "The additional inquiries would be grounded not in the circumstances that justified the initial traffic stop; rather, they would be grounded in the new suspicions aroused by, or while conducting, the lawful traffic-related or safety-related inquiries." Carrillo, 469 N.J. Super. at 337.

Although an officer may conduct certain incidental checks during an otherwise lawful traffic stop, he may not do so "in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Dunbar, 229 N.J. at 533-34 (quoting Rodriguez v. United States, 575 U.S. 348, 355 (2015)). To determine whether a detention is too long in duration, courts will consider "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during

which time it was necessary to detain the defendant." State v. Chisum, 236 N.J. 530, 547 (2019) (quoting Dickey, 152 N.J. at 477).

Here, Officer Kased's BWC demonstrates the motor vehicle stop lasted all of about seven or eight minutes until officers arrested defendant.[3] (Da42 at 0:00:00 to 0:07:00). Within the first minute, Officer Kased asks the occupants where they are going, notes that the driver was looking at his phone while driving, and asks the driver for his license, registration, and insurance. (Da42 at 0:00:00 to 0:01:00). The driver complies with the request, and Officer Kased then spends approximately twenty to twenty-five seconds looking at the driver's credentials. (Da42 at 0:01:00 to 0:01:44). Officer Kased then asks defendant for his license, which defendant provides. (Da42 at 0:01:44 to 0:02:19). Given that Officer Kased had observed defendant was not wearing a seatbelt when he approached the vehicle, (1T 21:9-13), it was reasonable for him to request defendant to provide identification.

As Officer Kased is waiting for defendant to provide his identification, he tells defendant his sneakers are "fire" and says he also owns a pair. (Da42 at

[3] When Officer Kased's BWC starts, he is already standing next to the passenger side door. Officer Kased testified that prior to activating his lights and stepping out of his vehicle, he had pulled up next to the driver and asked him why he stopped, and the driver responded he was lost. (1T 15:1-12). Officer Kased instructed the driver to stay there, and then the officer activated his overhead lights, stepped out of his vehicle, and activated his BWC. (1T 15:7-12; Da42). The State did not elicit testimony regarding how long it took for Officer Kased to have this brief exchange with the driver before he exited his vehicle and activated his BWC. However, it added at least a few seconds to the total length of the motor vehicle stop.

0:2:06 to 0:02:18). Defendant then provides his identification, and Officer Kased spends several seconds looking at it. (Da42 at 0:02:18 to 0:02:35).

Around this time, the driver mentions it is about to start raining, and Officer Kased continues talking with the driver and defendant. (Da42 at 0:02:30 to 0:03:30). Officer Kased then asks the driver to step out of the vehicle, and he testified he did this in part because both the driver and defendant appeared a bit nervous. (1T 19:21 to 20:9; Da42 at 0:03:35 to 0:03:58).

Officer Kased testified that around this time of the stop, he had observed defendant make furtive movements. Specifically, he observed defendant's hands were shaking, that defendant kept touching his fanny pack, and that defendant kept "blading his body," meaning he kept turning away from the officer's line of vision. (1T 22:15 to 24:16). These observations, when considered with Officer Kased's prior experience of arresting someone carrying a firearm in a fanny pack, created circumstances that reasonably gave rise to suspicions unrelated to the traffic offense. As such, Officer Kased was permitted, under these circumstances, to broaden his inquiries to satisfy those suspicions at this point of the stop. See Nelson, 237 N.J. at 552.

For the next minute, Officer Kased asks defendant about his last arrest and about whether there were any weapons. (Da42 at 0:03:56 to 0:04:55). Officer Kased testified he continued to observe furtive movements as he spoke to

defendant, and so at this point, he asked defendant to step out of the vehicle. (Da42 at 0:04:55 to 0:04:58). For the reasons set forth in Point I(D) of the State's brief, Officer Kased lawfully asked defendant to step out of the vehicle.

Another full minute passed before defendant finally stepped out of the vehicle. (Da42 at 0:04:58 to 0:05:58). Officer Kased then spent approximately thirty seconds attempting to pat down defendant before defendant broke away and tried to flee. (Da42 at 0:05:58 to 0:06:26). For the reasons set forth in Point I(E) of the State's brief, Officer Kased lawfully attempted to conduct a pat down of defendant. Approximately thirty-five seconds after defendant attempted to flee, officers have him in custody. (Da42 at 0:06:26 to 0:07:03).

In total, this stop leading up to defendant's arrest lasted no more than a mere eight minutes. The first half of the stop involved Officer Kased asking for and checking the driver's credentials and defendant's identification, while the second half of the stop involved Officer Kased inquiring about suspicions raised based on observations he made when checking their credentials. Notably, at least some of defendant's actions during the second half of the stop, including taking his time getting out of the vehicle and struggling with the officer as he attempted to conduct a pat down, contributed to the delay. Under these circumstances, Officer Kased worked diligently to confirm or dispel his suspicions quickly. As such, the eight-minute detention of defendant was

reasonable. See United States v. Sharpe, 470 U.S. 675, 686-88 (1985) (finding that a twenty-minute detention was reasonable when police acted diligently and the defendant contributed to the delay).

D. Officers Lawfully Ordered Defendant Out of the Vehicle Under the Totality of the Circumstances.

Defendant contends Officer Kased unlawfully ordered defendant out of the vehicle based on a hunch, which did not satisfy the heightened-caution standard required to justify ordering a passenger out of a vehicle. (Db20-25).

"[A] police officer may order a passenger out of a vehicle if the officer can 'point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle detained for a traffic violation.'" Bacome, 228 N.J. at 106 (quoting State v. Smith, 134 N.J. 599, 618 (1994)). "Furtive movements may satisfy the heightened caution standard" because "[t]he unknown nature of surreptitious movements creates a risk for an officer and, in turn, that risk supports the exercise of heightened caution." Id. at 107.

Here, Officer Kased observed defendant's hands were shaking, that defendant kept touching his fanny pack, and that defendant kept "blading his body," meaning he kept turning away from the officer's line of vision. (1T 22:15 to 24:16). Based on his observations of defendant's demeanor and furtive movements, his prior experience of arresting someone carrying a firearm inside

a fanny pack, the time of night, and the low lighting of the area, Officer Kased lawfully asked defendant to step out of the vehicle pursuant to the heightened-caution standard. (1T 25:20 to 28:6); see Bacome, 228 N.J. at 107-08 (finding the officer's request to remove the passenger of a vehicle was lawful after he observed the passenger making furtive movements, including reaching forward under his seat); Smith, 134 N.J. at 619-20 (finding an officer was justified in ordering passengers out of the vehicle based on his observations of their furtive movements, his inability to see the occupants' hands, and the early morning hour).

Defendant's reliance on State v. Scriven, 226 N.J. 20 (2016), to support a different conclusion is misplaced. There, the Supreme Court suppressed a gun found in the front passenger's possession during a motor vehicle stop because officers did not have articulable and reasonable suspicion to stop the car for a motor vehicle violation or for a community-caretaking purpose. Id. at 26. In so holding, the Court further held the officer did not have a reasonable and articulable suspicion to stop the car based solely on the fact that the vehicle had its high beams on and he has encountered stolen cars using high beams. Id. at 37-38.

By contrast, here, Officer Kased did not ask defendant to step out of the vehicle based solely on the fact that defendant had a fanny pack and Officer

Kased had previously arrested someone who had a firearm in a fanny pack. Rather, Officer Kased asked defendant to step out of the vehicle because defendant's hands were shaking, defendant kept touching the fanny pack, defendant was "blading his body," Officer Kased had a previous experience recovering a firearm from a fanny pack, it was late at night, and the area had low lighting. Thus, unlike in Scriven, the totality of the circumstances permitted Officer Kased to lawfully ask defendant to step out of the vehicle.

E. Officers Lawfully Attempted to Conduct a Pat Down of Defendant Because They Had Reasonable and Articulable Suspicion to Believe, Based on Their Observations, Training, and Experience, that Defendant Was Armed and Dangerous.

Defendant argues Officer Kased lacked the articulable and reasonable suspicion necessary to warrant him attempting to conduct a pat down of defendant. (Db25-27).

"[A]n officer is permitted to pat down a citizen's outer clothing when the officer 'has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.'" State v. Diloreto, 180 N.J. 264, 276 (2004) (quoting State v. Nishina, 175 N.J. 502, 514-15 (2003)). Notably, an "officer need not be absolutely certain that the individual is armed." Ibid. (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). "Rather, the test under Terry 'is whether a reasonably

prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" Id. at 277 (Terry, 392 U.S. at 27).

Moreover, "events occurring subsequent to a permissible investigatory stop may give rise to an objectively credible suspicion that the suspect is armed." Smith, 134 N.J. at 620 (quoting State v. Lund, 119 N.J. 35, 45 (1990)).

In this case, the facts that justified Officer Kased requesting defendant to exit the vehicle further justified him to attempt to conduct a pat down of defendant. Specifically, Officer Kased observed defendant's hands were shaking, that defendant kept "blading" his body, and that defendant kept touching his fanny pack. Additionally, it was late at night, the area had low lighting, and the officer had prior experiences recovering a firearm from a fanny pack. Under these circumstances, Officer Kased had reasonable and articulable suspicion to believe defendant was armed and dangerous.

Furthermore, defendant's demeanor and actions once he was asked to step out of the vehicle further justified Officer Kased's attempt to conduct a pat down. Specifically, defendant was very slow in exiting the vehicle, and while he was in the process of exiting, Officer Kased instructed defendant to "keep his hands where [he] could see them." (Da42 at 0:04:58 to 0:05:01). Indeed, while instructing defendant to keep his hands visible, Officer Kased said to defendant that he seemed to be "fidgety" and was "moving around." (Da42 at 0:05:02 to

0:05:07). Thus, under the totality of these circumstances, Officer Kased lawfully attempted to conduct a pat down of defendant.

F. Officers Lawfully Seized and Searched Defendant's Fanny Pack After He Abandoned It.

Defendant argues that because defendant threw the fanny pack in response to the officer's unlawful pat down, he did not abandon the property. (Db28 n.8).

Generally, a defendant who has abandoned property lacks standing to challenge the constitutionality of the item discarded. State v. Johnson, 193 N.J. 528, 547-48 (2008). "For the purposes of standing, property is abandoned when a person, who has control or dominion over property, knowingly and voluntarily relinquishes any possessory or ownership interest in the property and when there are no other apparent or known owners of the property." Id. at 549. An exception to this rule occurs "when a person throws away incriminating articles due to the unlawful actions of police officers." State v. Tucker, 136 N.J. 158, 172 (1994) (citation omitted).

Thus, on the one hand, if a person discards property as a result of an unlawful pursuit, such property will not be considered abandoned. Ibid. On the other hand, if a person tosses away property during the course of a lawful pursuit, then such property will be considered abandoned and may be seized without violating that person's constitutional rights. State v. Ruiz, 286 N.J. Super. 155, 163 (App. Div. 1995) (determining that if officers have an adequate

basis to conduct a Terry stop and a pursuit if that person flees, then "any items discarded along the way by the person pursued may be retrieved by the police and used as evidence of criminal conduct"); see also State v. Doss, 254 N.J. Super. 122, 129-30 (App. Div. 1992).

For the reasons set forth above, officers had a valid basis to conduct a motor vehicle stop; they lawfully removed defendant from the vehicle; and they had a reasonable and articulable suspicion warranting a pat down of defendant. Because the officers' actions up to this point were lawful, their pursuit of defendant when he began to flee was also proper. Thus, once defendant had tossed his fanny pack, officers lawfully seized his abandoned property.

G. Defendant's Claim that the Police Violated His Equal Protection Rights Must Fail Because the State Has Demonstrated Race-Neutral Reasons for Police Action, and Defendant Has Not Met His Ultimate Burden of Proving Officers Acted with a Discriminatory Purpose.

Defendant argues the gun, drugs, and other contraband should be suppressed because "the evidence in the record suggests that the prolonged traffic stop was either explicitly or implicitly racially motivated." (Db33).

"Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Paragraphs 1 and 5 of the New Jersey Constitution, a person's race may not be considered as a basis for making law enforcement decisions other than when determining whether an individual

matches the description in a BOLO alert." State v. Scott, 474 N.J. Super. 388, 403 (App. Div. 2023).

When a defendant advances a claim of racial discrimination, he "bears the preliminary obligation of establishing a prima facie case of discrimination." Id. at 404 (citing State v. Segars, 172 N.J. 481, 493 (2002)). "Once a defendant establishes a prima facie case of discrimination through relevant evidence and inferences, the burden of production shifts to the State to articulate a race-neutral basis for the challenged police action." Ibid. (citing Segars, 172 N.J. at 494).

"The State's burden of production 'has been described as so light as to be 'little more than a formality.'" Ibid. (quoting Segars, 172 N.J. at 494). "It is met whether or not the evidence produced is found to be persuasive." Segars, 172 N.J. at 494. "In other words, the determination of whether the party defending against an Equal Protection challenge has met its burden of production 'can involve no credibility assessment.'" Ibid. (quoting St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993)). "[I]f the State articulates a race-neutral explanation for the challenged police conduct, the presumption of discrimination 'simply drops out of the picture.'" Scott, 474 N.J. Super. at 405 (quoting Segars, 172 N.J. at 495).

Under those circumstances, the defendant bears the "ultimate burden of proving by a preponderance of the evidence that the police acted with

discriminatory purpose, i.e., that they selected him because of his race." Id. at 404 (quoting Segars, 172 N.J. at 493).

Initially, the trial court did not make any findings regarding whether defendant made a prima facie claim of racial discrimination. However, the trial court did find Officer Kased's testimony credible. (Da8). Thus, in responding to defendant's claim, the State will rely on the officer's credible testimony, as well as the BWCs submitted into evidence.

First, as to whether defendant made a prima facie claim of racial discrimination, it is the State's position that he did not. Even if this court were to determine defendant established such a prima facie claim, however, the State articulated race-neutral explanations for the challenged police conduct.

Defendant's first allegation of racially-motivated police conduct is the stop itself. Specifically, defendant claims that Officer Kased initially told the driver during an unrecorded conversation that he was free to go, but then the officer changed his mind once he observed the passenger was Black. (Db36).

Defendant's claim is not premised upon credible evidence. Officer Kased testified he had observed the vehicle impeding traffic because it was driving slow, and so he began following the vehicle. (1T 13:14-21; 1T 13:16-19). Before the officer had the opportunity to initiate a motor vehicle stop, the vehicle quickly pulled over. (1T 15:1-4). Officer Kased then asked the driver why he

stopped, and the driver responded that they were lost. (1T 15:4-7). Around this point, Officer Kased observed defendant in the vehicle, but he testified he was already planning on conducting a motor vehicle stop before the vehicle suddenly stopped. (1T 17:2-5). When asked on cross examination whether he told the driver he could go on his way or that he was free to leave, Officer Kased denied saying either of these statements. (1T 69:7-12).

Given that Officer Kased testified he was planning on conducting a motor vehicle stop before he even saw defendant, and he explicitly denied ever telling the driver he was free to leave before the stop even started, the State met its burden of articulating a race-neutral reason for the stop – that being the vehicle driving so slowly that it was impeding traffic. Moreover, because the court found Officer Kased's testimony credible, defendant has not met his ultimate burden of proving by a preponderance of the evidence that Officer Kased only planned on stopping the vehicle after he observed defendant was a passenger.

Defendant next contends that Officer Kased "selectively chose to investigate [defendant], who is Black, rather than the driver, who is white, even though it was the driver's alleged traffic violations that initiated the stop." (Db36).

Again, however, this allegation is belied by the record. Initially, Officer Kased testified that when there are two police officers effectuating a motor

vehicle stop, it is common practice for one officer to approach the driver's side of the vehicle and for the other officer to approach the passenger's side of the vehicle. (1T 70:16 to 71:5). He further testified that he "always" walks up to the passenger side. (1T 19:19-21). Officer Kased asked the driver for his credentials, and then, after checking them, he asked defendant for his identification because he had observed defendant was not wearing a seatbelt. (1T 21:8-13; Da42 at 0:00:00 to 0:02:19). Officer Kased had reasonable and articulable suspicion to believe both the driver and defendant had committed a motor vehicle infraction. Thus, there was a race-neutral reason for asking both occupants to provide identifications.

As set forth above, Officer Kased testified he noticed both the driver and defendant appeared nervous, and so he requested the driver to step out of the vehicle. (1T 19:22 to 20:20; Da42 at 0:00:53 to 0:01:40). Officer Kased further testified that because the driver was with Officer Giordano, he focused on defendant. (1T 21:3-9). He explained that around this time, he observed defendant's hands were shaking, that he kept touching his fanny pack, and that he was "blading his body." (1T 22:15-17; 1T 23:22 to 24:6). For the reasons explained above, the totality of the circumstances justified Officer Kased to ask defendant to step out of the vehicle. Moreover, these observations are all race-

neutral reasons that warranted Officer Kased's conduct of asking defendant to step out.

Finally, defendant alleges Officer Kased's "targeted, invasive questions," including a question about defendant's last arrest, were initiated based on racial bias. (Db36-37). Defendant claims this is demonstrated in part because Officer Kased did not ask the driver such questions. (Ibid.).

What defendant ignores is that on cross examination, when defense counsel began asking Officer Kased if he had asked certain questions to the driver, Officer Kased responded, "[The driver] was not wearing a fanny pack that he was constantly touching." (1T 76:20-23). Officer Kased's testimony, which the trial court found credible, thus provides a race-neutral reason for Officer Kased to focus his questioning on defendant rather than on the driver. As explained ad nauseam, Officer Kased's observations as the stop developed gave him reasonable and articulable suspicion to believe defendant was armed and dangerous. Unlike defendant, the driver was not wearing a fanny pack, and unlike defendant, the driver, although nervous, was not making furtive movements.

Moreover, it should be noted that the driver immediately complied with the officer's request to step out of the vehicle, and once he stepped out, Officer Giordano did question him. Officer Giordano's questions included whether the

driver had anything in the vehicle, whether he had any warrants on him, whether he had been arrested before, and whether he had anything on him that the officer should know about. (Da43 at 0:02:55 to 0:04:04). The driver answered the officer's questions and remained standing near the back of his vehicle while Officer Kased continued to question defendant and then asked defendant to step out of the vehicle. (Da43 at 0:03:50 to 0:05:15).

Therefore, as explained above, Officer Kased had race-neutral reasons to question defendant, which included defendant's shaky hands, the "blading" of his body, and his constant touching of the fanny pack. Furthermore, because the trial court found Officer Kased's testimony credible, defendant has not met his ultimate burden of proving Officer Kased acted because of a discriminatory purpose, such as defendant's race. As such, defendant's Equal Protection claim must fail.

POINT II

THE PROSECUTOR'S CLOSING DID NOT AMOUNT TO PROSECUTORIAL MISCONDUCT, AS HIS REMARKS WERE FAIR COMMENTS BASED ON THE EVIDENCE AND IN RESPONSE TO ARGUMENTS RAISED BY DEFENSE COUNSEL.

Defendant contends the assistant prosecutor's improper remarks during his closing summation amounted to prosecutorial misconduct and, thus, warrants reversal of his convictions. (Db38-43).

"[P]rosecutors are afforded considerable leeway in their closing arguments" and "are expected to make vigorous and forceful closing arguments to juries." State v. Smith, 167 N.J. 158, 177 (2001). "Criminal trials are emotionally charged proceedings. . . . [Thus, a prosecutor] is entitled to be forceful and graphic in his summation to the jury, so long as he confined himself to fair comments on the evidence presented." State v. Frost, 158 N.J. 76, 83 (1999) (quoting State v. DiPaglia, 64 N.J. 288, 305 (1975) (Clifford, J., dissenting)). "[A]s long as the prosecutor, 'stays within the evidence and the legitimate inferences therefrom,' '[t]here is no error.'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (second alteration in original) (citations omitted).

Even if a prosecutor's remarks cross over the line, they will not warrant reversal "unless the conduct was so egregious as to deprive defendant of a fair trial." State v. Wakefield, 190 N.J. 397, 438 (2007) (quoting State v. Papasavvas, 163 N.J. 565, 625 (2000)).

In this case, defendant failed to object to the State's closing summations at trial.

When a defendant fails to object, an appellate court will apply the plain error standard. State v. McGuire, 419 N.J. Super. 88, 142 (App. Div. 2011); R. 2:10-2. Under this standard, an appellate court will not reverse unless the

alleged error was "of sufficient magnitude to raise a reasonable doubt as to whether it led the jury to a result it would otherwise not have reached." McGuire, 419 N.J. Super. at 142-43 (citing State v. Feal, 194 N.J. 293, 312 (2008)). The plain error standard of review is appropriate because "[f]ailure to make a timely objection indicates that defense counsel did not believe the remarks were prejudicial at the time they were made." State v. Timmendequas, 161 N.J. 515, 576 (1999).

In this case, defendant points to two instances of alleged misconduct during the assistant prosecutor's summation. The first is when the assistant prosecutor stated the following:

> Now remember that Officer Kased testified that the defendant threw something over the fence that night? At that point he didn't know that it was a handgun. He said apparently he threw something and they did find something, they found something. Defense counsel had you believe that that something is a fanny pack. It's not [sic] planted by the police. But I want you to ask yourselves again does the defendant's theory make sense? If your answer is yes then think about all the other coincidences and certain circumstances that would have to be true in order for that to make any kind of sense. Our witnesses would have to coordinate a lie in order for that to be true. And none of those facts were advanced by the defense. (Indiscernible) no facts to back it up, or rather if the defendant took the bag off himself during the struggle and threw it over like Officer Kased said. Now you're the judge of that. The answer is clear based on all of the evidence, the defendant threw the fanny pack over the fence.
>
> [(9T 71:16 to 72:10).]

This statement was in response to defense counsel's claims that the officers were lying about defendant throwing a bag and that they planted the gun and bullets in the bag recovered. (See 9T 60:13 to 63:18). Such a response is permissible "so long as it does not constitute a foray beyond the evidence adduced at trial." State v. Munoz, 340 N.J. Super. 204, 216 (App. Div. 2001). Not only was there testimony that defendant had thrown something over the fence, but the strap of the bag, which is clearly visible on Officer Kased's BWC, and the strap of the bag recovered are one and the same. Thus, the evidence elicited during the course of the trial supported the assistant prosecutor's argument that defendant threw the fanny pack containing a gun over the fence.

To the extent defendant claims he was prejudiced when the assistant prosecutor stated that "none of those facts were advanced by the defense," such a "'fleeting and isolated' remark is not grounds for reversal," State v. Gorthy, 226 N.J. 516, 540 (2016) (quoting State v. Watson, 224 N.J. Super. 354, 362 (App. Div. 1988)), especially when considered in the context of the State's entire summation. Moreover, the court properly instructed the jurors that "[t]he State has the burden of proving the defendant guilty beyond a reasonable doubt," that the "burden never shifts to the defendant," and that [a]rguments, statements, remarks, openings and summations of counsel are not evidence and must not be treated as evidence." (9T 86:4-6, 19-20, 87:24 to 88:1). For these reasons, the

assistant prosecutor's statement did not amount to plain error and does not require reversal.

Defendant also contends the following statement amounted to prosecutorial misconduct: "You don't have to personally like all the witnesses that you heard testify, you may even think that the traffic stop was inappropriate. But don't let that distract you. This isn't a popularity contest. You're not going to debate the legality of the traffic stop, no." (9T 73:14-18).

Importantly, after telling the jury not to debate the legality of the traffic stop, the assistant prosecutor immediately stated: "You're all here to apply the law to the facts and come to a verdict as to the crimes charged." (9T 73:18-20). Just like the assistant prosecutor's previous comment that defendant now objects to, this comment about the legality of the stop was a fair response to defense counsel's remarks during summation, which heavily focused on Officer Kased's credibility and whether or not his actions during the motor vehicle stop were appropriate. (See 9T 53:1 to 58:25). Given that this remark was made in response to defense counsel's comments in closing, it was harmless and did not in any way deprive defendant of the right to have a jury fairly evaluate the merits of his defense. See State v. C.H., 264 N.J. Super. 112, 135-36 (App. Div. 1993).

Accordingly, the assistant prosecutor's closing remarks do not require reversal of defendant's convictions.

POINT III

THE FACT THAT THE STATE'S EXPERT TESTIFIED THE DRUGS IN DEFENDANT'S POSSESSION ALSO TESTED POSITIVE FOR FENTANYL DID NOT DEPRIVE DEFENDANT OF DUE PROCESS AND A FAIR TRIAL.

Defendant argues he was deprived of a fair trial because the State's expert "repeatedly testified" that multiple substances tested positive for fentanyl, and the admission of such evidence was improper under N.J.R.E. 404(b). (Db43-47).

Initially, defendant's claim that the expert "repeatedly testified" that multiple substances tested positive for fentanyl is an exaggeration. During the expert's testimony, the following exchange occurred:

> Q: What was the result of the G.C.M.S. test on the items that you tested of S-40?
>
> A: For item 1A, that's the AMG stamp, it was both heroin and fentanyl, for item 1B, being the Tesla stamp, it was fentanyl, and for 1C, being the Thriller stamp, we have four AMPP, heroin and fentanyl.
>
> THE COURT: Say that again?
>
> THE WITNESS: From the beginning?
>
> THE COURT: 1C
>
> THE WITNESS: 1C is four AMPP, heroin and fentanyl.
>
> THE COURT: Thank you.
>
> THE WITNESS: You're welcome.

> Q: So two of the items, items A—1A and 1C, they both tested positive for heroin?
>
> A: Yes.
>
> Q: Okay. So from the tests that you performed were you able to form an expert opinion as to what the contents of S-40 1A and 1[C]?
>
> A: Yes.
>
> Q: What would that be?
>
> A: That 1A contains heroin and fentanyl and 1C contains AMPP, heroin, and fentanyl.
>
> [(9T 28:11 to 29:9).]

This portion of the transcript is the only section where the expert mentions the word "fentanyl," and the focus of her testimony was on the items that tested positive for heroin and the item that tested positive for cocaine.

Additionally, the expert's mention of the word "fentanyl" in this context is not "other-crime evidence." The items that tested positive for fentanyl also tested positive for heroin, and the State needed to prove that defendant possessed heroin. Thus, the contents of those items go directly to proving or disproving that defendant possessed heroin. Given that the contents of those items were evidence of the crime charged, the fact that the jury heard the word "fentanyl" in this context is not "other-crime evidence." However, even if this was "other-crime evidence," it would have been admissible under N.J.R.E. 404(b).

N.J.R.E. 404(b) governs the admissibility of "other crimes, wrongs, or acts" evidence. "Evidence of a defendant's other crimes, wrongs, or acts may

not be admitted into evidence to prove a defendant's criminal disposition as a basis for proving guilt of the crimes charged." State v. Koskovich, 168 N.J. 448, 482 (2001); N.J.R.E. 404(b)(1). However, such evidence may be admitted for other purposes, such as to prove opportunity, knowledge, or identity. N.J.R.E. 404(b)(2).

To determine whether other-crimes evidence is admissible, courts will apply the Cofield test, which permits the admittance of such evidence if the following criteria is met:

> 1. The evidence of the other crime must be admissible as relevant to a material issue;
>
> 2. It must be similar in kind and reasonably close in time to the offense charged;
>
> 3. The evidence of the other crime must be clear and convincing; and
>
> 4. The probative value of the evidence must not be outweighed by its apparent prejudice.
>
> [State v. Cofield, 127 N.J. 328, 338 (1992) (citation omitted).]

As to the first Cofield prong, the evidence is clearly relevant and material because defendant was charged with possession of CDS, heroin, and the State needed to demonstrate that the items defendant possessed contained heroin. Thus, whether the items contained heroin, fentanyl, or some other drug were relevant and material to proving the crime charged.

As to the second Cofield prong, the so-called "crime" of possessing fentanyl is not only similar in kind and reasonably close in time to the offense charged, but several of the items that contained fentanyl also contained heroin. Therefore, such possession occurred simultaneously in this case.

As to the third Cofield prong, an expert tested the items found in defendant's underwear and determined they tested positive for fentanyl. Thus, evidence of defendant's possession of fentanyl is clear and convincing.

Finally, as to the fourth Cofield prong, the probative value is not outweighed by its apparent prejudice. The same evidence that demonstrated defendant possessed fentanyl also demonstrated he possessed heroin, which was one of the crimes defendant was charged with.

For these reasons, evidence that defendant possessed fentanyl would have been admissible under N.J.R.E. 404(b).

Even if evidence that defendant possessed fentanyl was improperly admitted, however, such an error is not "of sufficient magnitude to raise a reasonable doubt as to whether it led the jury to a result it would otherwise not have reached." McGuire, 419 N.J. Super. at 142. As noted above, the items were found in defendant's underwear, and they tested positive for both heroin and fentanyl. This evidence was thus more than sufficient to demonstrate defendant was guilty of possession of CDS, heroin. Indeed, during his

summation, defense counsel practically conceded that defendant possessed CDS. (9T 63:19-22). For these reasons, the fact that the expert testified the items recovered in defendant's underwear tested positive for fentanyl does not require reversal of defendant's convictions.

POINT IV

DEFENDANT'S SENTENCE SHOULD BE AFFIRMED BECAUSE THE COURT PROPERLY CONSIDERED AND WEIGHED AGGRAVATING AND MITIGATING FACTORS AND IMPOSED A SENTENCE ACCORDINGLY.

Defendant contends his sentence was excessive because the court failed to apply mitigating factor one. (Db47-50).

An appellate court "must not substitute its judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014). It will affirm the sentence imposed by the trial court unless, for example, the trial court violated the sentencing guidelines or did not base its aggravating and mitigating factor findings on competent and credible evidence in the record. State v. Tillery, 238 N.J. 293, 323 (2019).

A sentencing court has broad discretion to sentence within the statutory range. State v. Case, 220 N.J. 49, 53-54 (2014). To determine the appropriate length of the term, a sentencing court must carefully analyze and weigh the aggravating and mitigating factors. State v. Randolph, 210 N.J. 330, 348 (2012). The court must conduct a qualitative analysis of the relevant factors and balance

them accordingly. State v. McFarlane, 224 N.J. 458, 466 (2016). It must also explain its findings and its reasons for imposing sentence. Ibid.

Here, the trial court properly found aggravating factors three, six, and nine and rejected a finding of mitigating factor eight. (11T 16:3-22). The trial court further found mitigating factor two and determined the aggravating factors substantially outweighed the mitigating factors. (11T 16:22 to 17:12). In finding mitigating factor two, the court noted, "even though it might be obvious to some that the circumstances and his conduct would threaten serious harm, I think that at the time the defendant did not contemplate his conduct would cause serious harm." (11T 17:1-5).

The court's implicit rejection of mitigating factor one, the defendant's conduct neither caused nor threatened serious harm, was proper because it was not supported by credible evidence in the record. Defendant possessed a handgun loaded with hollow nose bullets that was easily accessible in his fanny pack, and he threw the fanny pack containing the loaded handgun over a fence. Moreover, defendant reported he was under the influence at the time of this incident. (11T 15:11-12). Possessing an easily accessible, loaded handgun while under the influence threatens serious harm. Therefore, the evidence in the record did not support a finding of mitigating factor one.

Given that mitigating factor one was not applicable, and the trial court did not otherwise abuse its discretion in its well-reasoned findings regarding the aggravating and mitigating factors, this court should uphold the sentence the trial court imposed on defendant.

CONCLUSION

Based on the foregoing, the State submits that the trial court's order denying defendant's motion to suppress, defendant's judgment of conviction, and defendant's sentence, be **AFFIRMED**.

Respectfully submitted,

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July 8, 2025

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000673-23
INDICTMENT NO. 21-08-00685-I;

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Hudson County.
SHAQUIL D. HUGGINS, A/KA/ SHAQUIL HUGGINS,	:	
	:	Sat Below:
Defendant-Appellant.	:	Hon. Angelo Servidio, J.S.C. and a jury
		DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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REPLY PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Shaquil D. Huggins relies on the procedural history and statement of facts from his initial brief. (Db 1-11)[1]

LEGAL ARGUMENT

Huggins relies on the legal arguments from his initial brief, adding the following:

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AS A RESULT OF AN UNLAWFUL STOP AND SEIZURE.

A. The Officers Unlawfully Extended The Stop When They Exceeded The Time Needed To Complete The Stop's Mission, And Such Argument Is Not Waived.

The State's procedural and substantive arguments regarding whether the officers unlawfully extended the stop with Huggins must both be rejected. (Sb 22-28) Despite the State's assertions, Huggins's argument in his initial brief that the officers unlawfully extended the stop is not waived, because (1) the record was fully developed at the suppression hearing, and (2) the trial court ruled on the issue in its written opinion denying suppression. Further, the State's

[1] This brief uses the same abbreviations as Huggins's initial brief. In addition, Db refers to Huggins's initial brief, and Sb refers to the State's brief.

substantive argument that an eight-minute stop cannot be considered unlawful also lacks merit and is unsupported by case law.

First, the unlawful extension of the stop was not waived. An appellate court will not review an argument raised for the first time on appeal if the "failure to raise the issue created a 'record . . . barren of facts that would shed light on [the] issue.'" State v. Scott, 229 N.J. 469, 479 (2017) (quoting State v. Witt, 223 N.J. 409, 418 (2015)). However, if a trial court was alerted to the "basic problem" and had "the opportunity to consciously rule upon it" then the issue may be raised for appellate review. State v. Andujar, 462 N.J. Super. 537, 550 (App. Div. 2020) (citation omitted), aff'd, 247 N.J. 275 (2021). In Scott, the Court found it appropriate to review the State's argument that was not raised at trial because the record was "fully developed" and revealed "sufficient facts upon which the State" was able to base its argument from. Id. at 480.

Here, this Court should not consider the argument that the officers unlawfully extended the stop waived, because the record as it pertains to this issue was "fully developed" at the suppression hearing. Indeed, the trial court's suppression ruling included its conclusion, based on this fully developed record, that the stop had not been unlawfully extended.[2] (Da 10)

[2] Further, any suggestion from the State that Huggins's argument that the stop was unlawful is waived because of concessions made by trial defense counsel during the suppression hearing should be rejected, because the State fully

The record was fully developed because a central focus of the suppression hearing was the intrusive questioning Officer Kased engaged in with Huggins. For instance, Kased testified that he asked questions about Huggins's shoes, his employment, how he makes money, and when the last time he was arrested. (1T 75-15 to 76-10, 78-3 to 79-4, 86-8 to 23) In addition, Kased's body-worn camera footage (BWC) memorializing such questioning was also admitted as evidence and shown to the trial court. (Da 42 00:00-05:00) Further, at oral argument for the suppression motion, the parties debated the characterization of such questioning with defense counsel arguing that the questioning reveals that Kased was racially profiling Huggins, while the State argued it was a "cordial conversation." (2T 3-22 to 17-22) Thus, the record developed during the suppression hearing was far from "barren," and instead there was "sufficient facts" presented for Huggins to base its argument from. See Scott, 229 N.J. at 480.

Moreover, the trial court ruled on this exact issue – that the stop had not been unlawfully extended. (Da 10: noting that "police may question the

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briefed the lawfulness of the stop prior to the suppression hearing, and the court ruled that the stop was lawful and provided its reasoning. (Da 5-25) Therefore, the record was fully developed regarding the lawfulness of the stop and may be raised on appeal. See also State v. Jenkins, 178 N.J. 347, 359 (2004) (holding that "when there is no evidence that the court in any way relied on a defendant's position, it cannot be said that a defendant has manipulated the system.").

occupants 'even on a subject unrelated to the purpose of the stop, without violating the Fourth Amendment so long as the questioning does not extend the duration of the stop[,]'" and holding that "the stop was lawful, as was Officer [Kased]'s questioning of the [d]efendant.") Thus, the trial court did indeed contemplate the issue, and therefore the argument cannot be deemed waived. See Andujar, 462 N.J. Super. at 550.

Next, the State's substantive argument that the officers did not unlawfully extend the stop must similarly be rejected. (Sb 23-28) The State argues that the "eight-minute detention of defendant was reasonable" and thus the officers did not unduly prolong the stop. (Sb 25-28) However, when considering whether a stop was unlawfully extended, the question is not, "how long did the stop last," but instead is, "did the officers 'exceed[] the time needed to handle the matter for which the stop was made.'" Rodriguez v. United States, 575 U.S. 348, 350 (2015). If officers do exceed the time needed to handle the matter at hand, then an officer needs "reasonable suspicion independent from the justification for a traffic stop" that an offense is being or has been committed. State v. Dunbar, 229 N.J. 521, 540 (2017); see also Rodriguez, 575 U.S. at 353-54, 358 (remanding to the United States Court of Appeals for the Eighth Circuit to determine whether an officer's prolonging of a stop by seven or eight minutes was supported by

reasonable suspicion since it extended the stop "beyond completion of the traffic infraction investigation").

Here, as emphasized in Huggins's initial brief, Kased made no effort to actually complete the mission of the stop and instead delayed completing the stop by asking wholly irrelevant and intrusive questions. (Db 17-20) The fact that the stop may have lasted only eight minutes prior to Huggins's arrest is not dispositive to this issue. See Rodriguez, 575 U.S. at 353-54. Thus, both the State's procedural and substantive arguments regarding the unlawful extension of the stop must be rejected, and the items discovered as a result the officers' unlawful actions must be suppressed.

B. The Fanny Pack Seized Was Not Abandoned Because Items Discarded As A Result Of Unlawful Police Action Are Not Considered Abandoned.

In his initial brief, Huggins explained why this Court should reject the State's alternative argument presented at the suppression hearing: that Huggins abandoned the fanny pack that contained the firearm. (Db 28) The State reasserts this argument on appeal, while correctly acknowledging that "if a person discards property as a result of an unlawful pursuit, such property will not be considered abandoned." (Sb 32 (citing State v. Tucker, 136 N.J. 158, 172 (1994)) (emphasis added). As the State highlights, Tucker identifies that "when a person throws away incriminating articles due to the unlawful actions of police

officers," the articles cannot be considered abandoned. Ibid. (citations omitted); (Sb 32) Thus, to determine whether an item has been properly abandoned a court must consider "whether the abandonment was the product of an illegal seizure." Ibid.; see also State v. Casimono, 250 N.J. Super. 173, 186 (App. Div. 1991) (holding that evidence thrown in "direct response" to an illegal pat down must be suppressed).

Huggins initial brief outlines every unlawful police action taken on the night he was unlawfully searched and seized including that Officer Kased: (1) unlawfully stopped the vehicle Huggins was a passenger in; (2) unlawfully extended the stop; (3) unlawfully ordered Huggins out of the vehicle; and (4) unlawfully attempted to frisk Huggins. (Db 12-27) If Huggins did indeed throw the fanny pack, it was in direct response to Kased's illegal actions, particularly his attempt to illegally pat down Huggins. Thus, Huggins's alleged actions were "the product of an illegal seizure" and thus the fanny pack cannot be considered abandoned and instead must be suppressed. See Tucker, 136 N.J at 172.

C. The Items Seized Must Be Suppressed Pursuant To The Exclusionary Rule Because The Officers Engaged In Flagrant Police Misconduct When They Conducted A Racially Motivated Stop And Seizure.

The State mischaracterizes Huggins's racial discrimination argument as an equal protection claim. (Sb 33-39) Huggins's initial brief does not raise such claim but rather argues that the officers' engaged in flagrant misconduct by

engaging in a racially motivated stop and seizure that thus requires the enforcement of the exclusionary rule under search and seizure jurisprudence. (Db 28-37) The exclusionary rule ensures that the State is barred from "introducing into evidence the fruits of an unlawful search or seizure by the police" and is used as a tool to deter police from engaging in unconstitutional conduct. State v. Williams, 192 N.J. 1, 14 (2007); State v. Shaw, 213 N.J. 398, 413 (2012). However, if "the connection between the unconstitutional police action and the evidence becomes so attenuated as to dissipate that taint from the unlawful conduct," then the exclusionary rule will not apply. Williams, 192 N.J. at 15. One factor a court must consider to determine whether discovered evidence is sufficiently attenuated is "the flagrancy and purpose of the police misconduct." Ibid.

Huggins argued in his initial brief, in part, that the exclusionary rule must apply to the items seized because the officers engaged in flagrant misconduct by conducting a seizure that was either explicitly or implicitly racially motivated. (Db 32-37) The New Jersey Supreme Court has recognized that racial discrimination is not only a consideration in the equal protection context but is also a consideration when evaluating the constitutionality of a search and seizure. For instance, in State v. Nyema, the New Jersey Supreme Court determined that a car stop based on the race and sex of the occupants, which

matched a police dispatcher alert, "was insufficient to justify the stop of the vehicle" and could not "withstand constitutional scrutiny" because such racial profiling "effectively placed every single Black male in the area under the veil of suspicion." 249 N.J. 509, 516 (2022); see also State v. Maryland, 167 N.J. 471, 485 (2001) (highlighting that "[t]he objective reasonableness standard for deciding the constitutionality of a search . . . is not satisfied when the only reason for the search is the individual's race"). Further, in Shaw, the Court found that "[a] random stop based on nothing more than a non-particularized racial description of the person sought is especially subject to abuse," and determined that such random stop constituted flagrant police misconduct that required suppression of the items seized pursuant to the exclusionary rule. 213 N.J. at 421-22.

Here, the record developed at the suppression hearing suggests that Kased evinced either explicit or implicit racial bias when he chose to prolong the stop only after seeing Huggins, a Black man, in the passenger seat, and when he asked Huggins targeted, invasive questions pertaining to his criminal history and ability to afford expensive shoes. Thus, the evidence discovered cannot be attenuated from the taint of the officers' flagrant misconduct and such flagrant police misconduct cannot be condoned. As a result, the evidence discovered as a result of the stop should be suppressed.

POINT II

THE EVIDENCE OF ALLEGED FENTANYL POSSESSION DID CONSTITUTE OTHER-CRIME EVIDENCE, AND THE ADMISSION OF SUCH EVIDENCE DEPRIVED DEFENDANT OF A FAIR TRIAL.

Huggins argued in his initial brief that he was deprived a fair trial because evidence that he allegedly possessed fentanyl, a crime for which he was not charged, was improperly admitted through the State's expert witness. (Db 43-47) This other-crime evidence served no legitimate evidentiary purpose and had the clear capacity to inflame the jury, creating a substantial risk that the jury would convict because of its belief that Huggins is a "bad person."

The State first contends that the admission of such evidence did not constitute "other-crime evidence." (Sb 45) This contention must be rejected because the fentanyl evidence admitted at trial was not necessary to prove the charged offense of heroin possession. Evidence will not be considered "other-crime evidence" and thus will not be subject to a N.J.R.E. 404(b) analysis when the evidence is considered "intrinsic." State v. Rose, 206 N.J. 141, 179-80 (2011). Intrinsic evidence is evidence that either "'directly proves' the charged offense" or if evidence of uncharged acts "facilitate the commission of the charged crime." Ibid. (quoting United States v. Green, 617 F.3d 233, 248-49 (3d Cir. 2010)).

Here, despite the State's assertion, the fentanyl evidence is other-crime evidence because it does not tend to prove or disprove the charged act of heroin possession. Fentanyl and heroin are distinct controlled substances, thus the fact that a substance tested positive for fentanyl in no way proves that the substance also tested positive for heroin. See, e.g., N.J.S.A. 24:21-5 (listing heroin as a distinct Schedule I substance); N.J.S.A. 24:21-6 (listing fentanyl as a distinct Schedule II substance). Here, the State's expert witness testified that two of the three items she tested were positive for heroin and fentanyl. (9T 28-11 to 29-9) The expert witness could have easily only testified that the substances she examined tested positive for heroin to assist in proving the charged offense of heroin possession; she did not need to mention that the substances also tested positive for fentanyl. To compare, if the substances did not test positive for heroin and only tested positive for fentanyl, then the State would have completely failed in proving the charged act of heroin possession. In fact, the expert witness testified that one item only tested positive for fentanyl – it is impossible to reason how that item testing positive for fentanyl helped prove the charged act of heroin possession. (9T 28-11 to 29-9)[3]

[3] The State does not argue that the alleged fentanyl possession facilitated "the commission of the charged crime" of heroin possession. Regardless, it should not be considered intrinsic evidence for this reason either because there is no

The State then argues in the alternative that if the fentanyl evidence did constitute "other-crime evidence," it would still be admissible under N.J.R.E. 404(b). (Sb 46-47) However, the State fails to adequately demonstrate that such evidence satisfied the Cofield test for admissibility of N.J.R.E. 404(b) evidence. State v. Cofield, 127 N.J. 328, 338 (1992). The Court in Cofield set out a four-pronged test for the admissibility of evidence under N.J.R.E. 404(b) and as Huggins argued in his initial brief, the admission of fentanyl evidence here fails the first prong (the other-crime evidence must be "relevant to a material issue") and the fourth prong ("[t]he probative value of the evidence must not be outweighed by its apparent prejudice") of the Cofield test. Ibid.; (Db 45-46) To reemphasize, Huggins was not charged with fentanyl possession so whether the items tested positive for fentanyl was not in dispute, was not relevant to proving Huggins possessed heroin, and had no probative value. (Da 1-4) The only purpose for admitting such evidence was to spark the passions of the jury and turn the jury against Huggins because of the belief he is a bad person due to the alleged fentanyl possession. Thus, the evidence only served to prejudice Huggins and reversal of Huggins's convictions is required so that he can receive a fair trial.

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indication from the evidence that the items testing positive for fentanyl in any way facilitated the charged act of heroin possession.

CONCLUSION

For the reasons set out in Huggins's initial brief and this reply, the evidence seized during the unlawful stop and seizure of Huggins must be suppressed and Huggins's convictions must be reversed. In the alternative, Huggins's convictions should be reversed as a result of the errors demonstrated at trial and Huggins should be permitted to withdraw his guilty plea to the certain persons offense. Lastly, should this Court uphold Huggins's convictions, the matter should be remanded for resentencing.

Respectfully submitted,

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