

STATE OF NEW JERSEY	.	SUPERIOR COURT OF NEW JERSEY
	.	APPELLATE DIVISION
Plaintiff-Respondent	.	
	.	DOCKET NO. A-001867-24
	.	
v.	.	
	.	CRIMINAL ACTION
	.	
RONALD C. SMITH	.	On Appeal from the Final Judgment
	.	of the Superior Court of New Jersey
	.	
Defendant-Appellant	.	Law Division-Criminal
	.	Mercer County, Indict. No. 22-09-0571 I
	.	
	.	
	.	Sat Below:
	.	Honorable J. Adam Hughes, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT RONALD C. SMITH

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PROCEDURAL HISTORY

On June 25, 2022, Ronald Smith was charged in a criminal complaint with weapons offenses, including unlawful possession of a weapon, unlawful possession in support of a CDS offense, and certain persons not to possess weapons, all in the second degree, plus possession with intent to distribute, possession with intent in or near school property (both third degree) and possession with intent to distribute in or near park property (second degree)(Da14-26). He was held pending a pretrial detention motion, which the trial court subsequently granted (Da9-10).

On September 14, 2022, a Mercer County Grand Jury returned a seven-count indictment mirroring the charges in the initial complaint (Da10, 27-33). Defendant entered not guilty pleas to all charges. On January 9, 2023, the defendant filed a motion to suppress evidence seized without a warrant (Da34). The court heard testimony from witnesses on February 21, 2023, and March 22, 2023 (Da10-11).¹ On April 19, 2023, the court denied the motion and read its oral opinion into the record (Da36, 3T:8:1-24:8).

On June 15, 2023, Mr. Smith entered a conditional guilty plea to unlawful possession of a weapon in the second degree (Da37-43). His plea agreement

¹ References to the transcripts are as follows:

1T – February 21, 2023

2T – March 22, 2023

3T – April 19, 2023

expressly reserved the right to appeal the denial of his suppression motion (Da37).

On July 20, 2023, he was released on non-monetary conditions (Da12).

On January 22, 2025, he was sentenced to five years in state prison with a 42-month period of parole ineligibility (Da44-46). The trial court subsequently granted defendant's motion for bail pending appeal (Da47-49). A timely notice of appeal was filed on February 28, 2025 (Da1-3).

STATEMENT OF FACTS

On June 25, 2022, at approximately 10:25 p.m., Trenton police department Detective Kulis and his partner were parked on the south-bound shoulder of Martin Luther King Boulevard (1T:65:3-6, 65:22-66:10). As part of a directed traffic enforcement detail, they had been tasked with stopping vehicles for observed motor vehicle violations in an area identified by police as high crime (1T:9:22-10:18, 59:24-60:10). While parked, Detective Kulis observed a Nissan Maxima, traveling north on Martin Luther King Boulevard, turn right onto East Paul Avenue without signaling (IT:65:3-10, 70:11-14). He did not recall if there was any traffic behind the vehicle or on East Paul (IT:69:22-70:21). He also noted that the car windows appeared tinted, although he did not initially specify which windows raised concern (1T:12:10-13:1, Da24).

The officers pulled out and followed the Nissan. Both officers were equipped with body-worn cameras (2T:15:2-4). Kulis activated his camera, which

he noted captures video for 30 seconds before activation, but without audio (2T:20:7-22). In this instance, the silent, pre-activation segment shows Kulis activating his emergency lights after turning onto East Paul (2T:31:3-5, Ex. D-6, BWC, Da50 at 22:24:50).² The driver, later identified as Ronald Smith, traveled a short distance, approximately one block or 306 feet from his initial turn, before pulling over on East Paul Avenue (2T:31:6-15).³ His car came to a controlled stop, partially blocking the intersection with Chase Street (1T:15:6-12).

As the officers approached, Detective Kulis directed his flashlight through the driver's side window. Through the tint, he observed Mr. Smith reaching between the seat and the center console with his right hand (1T:15:13-16:6). However, upon reaching the window, Mr. Smith was holding a wallet in his right hand, having visibly taken it from his right back pocket (Da50 at 22:25:10-13).

Mr. Smith complied fully with all commands (2T:14:3-15:1, Da50 at 22:25:10-22:26:45). He provided his license and registration, rolled down the rear windows upon request, and responded to routine questions (Da50 at 22:25:11-57). The officer also looked into the interior of the car using his flashlight and commented on the smell of smoke (Da50 at 22:25:53-26:15). At no point during

² The body-worn camera video was submitted in accordance with Clerk's Office procedures. A placeholder for Exhibit D-6 appears at Da50.

³ See Google Maps, <https://www.google.com/maps> (last visited 5/15/2025) (measuring the distance between Martin Luther King Jr. Boulevard and Chase Street via East Paul Avenue in Trenton, New Jersey as approximately 306 feet).

this exchange did the officer express concern for his safety or identify any threat (Da50 at 22:25:10-26:44).

The officer did not instruct Mr. Smith to exit the vehicle until more than a minute after the initial interaction (Da50 at 22:26:24). Once outside, he was positioned against the car, and the officer conducted a frisk (Da50 at 22:26:42-27:37). During the pat-down, Detective Kulis repeatedly manipulated Mr. Smith's right front pocket over the course of approximately 40 seconds, focusing on a small object roughly the size of a quarter (Da50 at 22:26:55-27:35). Eventually, the officer asked, "What's here?" and Mr. Smith responded, "Coke" (Da50 at 22:27:34-37). He was immediately placed in custody.

All subsequent video footage shows multiple officers conducting a comprehensive search of the Nissan Maxima. At least four different officers inspected the vehicle (Da50). Detective Kulis searched all four doors, the seats, the floor areas, the glove box, and the center console (Da50 at 22:33:09-35:30). He then moved to the trunk and searched that compartment as well (Da50 at 22:35:31-41:51). Next, he began removing dashboard components to access areas behind the plastic panels on both the driver's and passenger's sides. He also removed the door panels and the center console bracket (Da50 at 22:42:22-47:52).

At one point, Detective Kulis told Mr. Smith's passenger he was free to leave but then said he needed "one more second" and he "had to check one more

thing on this car” (Da50 at 22:49:31-36). He proceeded to look under the hood and continued the search beneath the front and back seats. Approximately 30 minutes into the process, Kulis called out a gun code, having seen a gun under the driver’s seat (Da50 at 22:55:05-12). The passenger was then placed under arrest (Da50 at 22:55:33).

LEGAL ARGUMENT

POINT I

THE STOP WAS UNSUPPORTED BY REASONABLE AND ARTICULABLE SUSPICION, WHERE NEITHER THE ALLEGED WINDOW TINT VIOLATION NOR THE FAILURE TO SIGNAL CONSTITUTED A VALID BASIS.

(Court ruled at T3:14:2-16:6, 21:2-10)

New Jersey and United States Supreme Courts have long held that a stop of an automobile, even for a minor traffic infraction, “constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment].” *Whren v. United States*, 517 U.S. 806, 809–810 (1996); *State v. Scriven*, 226 N.J. 20, 34-35 (2016); *State v. Sloane*, 193 N.J. 423, 430 (2008). To justify such a stop, a police officer must possess “an articulable and reasonable suspicion that the driver has committed a motor vehicle offense.” *State v. Locurto*, 157 N.J. 463, 470 (1999) (internal citation omitted); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). This standard is not met where the officer, even reasonably, misunderstands the scope or meaning of a statute. *State v. Carter*, 247 N.J. 488, 504 (2021) (declining to follow the

federal “reasonable mistake of law” standard set forth in *Heien v. North Carolina*, 574 U.S. 54 (2014)).

Although this court will defer to the trial court’s factual findings where supported by credible evidence, it reviews *de novo* the legal conclusion as to whether those facts support a finding of reasonable and articulable suspicion. *State v. S.S.*, 229 N.J. 360, 380 (2017). Here, because the trial court’s ruling turned on whether the alleged motor vehicle violations legally justified the stop, the standard of review is *de novo*.

This stop also occurred in the context of a targeted enforcement strategy. The officer testified that he was assigned to a so-called high-crime area for the express purpose of stopping passing motorists for minor infractions (1T:9:22-10:18, 60:6-10). Such directed, discretionary enforcement raises concerns about arbitrary policing and warrants heightened scrutiny. While pretext alone does not render a stop unconstitutional, it underscores the need for courts to rigorously apply settled legal standards and avoid expanding what qualifies as a valid traffic violation. *See State v. Carter*, 247 N.J. at 523 (noting that “limitless discretion can invite pretextual stops” and lead to “arbitrary and discriminatory enforcement”); *State v. Carty*, 170 N.J. 632, 639 (2002) (acknowledging the need for enhanced protections under the state constitution against policing practices that may disproportionately affect certain communities). When alleged infractions are minor

and rely heavily on officer discretion, as they do here, the risk of constitutional overreach is significantly enhanced.

Against this backdrop, the lower court erred in concluding that the stop of Mr. Smith's car was lawful. It relied on two asserted motor vehicle violations: a purported window tint violation and an alleged failure to signal a turn. But the officer himself testified that he observed the driver's movements through the window with the aid of a flashlight, facts that place this case squarely within the holding of *State v. Smith*, where such visibility defeats a claim of impermissible tint. 251 N.J. 244, 265-66 (2022); (1T:15:13-16:6). As for the alleged failure to signal, the record contains no evidence that any moving traffic was present, let alone affected at the time (1T:69:22-70:20, 74:15-75:5). The only nearby vehicle was the officer's own patrol car, parked on the shoulder across the street (1T:65:22-66:10). Under these circumstances, the State failed to carry its burden of establishing a motor vehicle violation as grounds for justifying the seizure. *See State v. Carter*, 247 N.J. at 524.

Because neither ground for the stop withstands scrutiny, the seizure of Mr. Smith and subsequent search of his car violated his constitutional rights. Under well settled exclusionary rule doctrine, all evidence recovered, including the handgun, must be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 485

(1963); *State v. Bryant*, 227 N.J. 60, 71 (2016). Each legal deficiency is addressed in the subpoints that follow.

A. The officer’s ability to see through the tinted window defeated the basis for a violation of N.J.S.A. 39:3-74 under *State v. Smith*.

At the time of the traffic stop in this case, our Supreme Court had not yet issued its decision in *State v. Smith*, 251, N.J. 244 (2022), which clarified the statutory scheme regulating tinted windows under the New Jersey Motor Vehicle Code. That decision, issued three days after the stop, held that rear tinted windows—even if heavily darkened—do not violate any motor vehicle statute, and that front tinted windows only give rise to reasonable suspicion under N.J.S.A. 39:3-74 if they are “so darkly tinted that police cannot clearly see people or articles within the car.” *Id.* at 260. The Court explained that 39:3-74 is the only statute applicable to window tint, and it prohibits specifically aftermarket tinting on the windshield or front windows that unduly interferes with visibility. *Id.* at 264. In contrast, N.J.S.A. 39:3-75 addresses the use of safety glass and prohibits window glass that causes unsafe distortion of visibility, but it has no applicability to window tint. *Id.* at 260-61. It cannot serve as a lawful basis for a tinted-windows violation.

The Court’s ruling effectively curtailed the long-standing and widespread practice of using tinted windows as a pretextual basis for traffic stops, particularly under 39:3-75. *Id.* at 252-53. That statute, which governs the use of safety glass is

not limited to front windows, unlike 39:3-74. But as the Court made clear, 39:3-75 does not regulate tinting and cannot justify a stop based on the darkness of window tint. *Id.*

Prior to *Smith*, officers routinely cited N.J.S.A. 39:3-75 to justify stops based on rear or rear-side window tinting, and that is precisely what occurred here. The officer did not reference the front windows, did not mention visibility, and did not cite N.J.S.A. 39:3-74 in any contemporaneous document. Instead, both the traffic ticket, and affidavit of probable relied solely on 39:3-75, without identifying which window allegedly violated the law (Da24). This generic, conclusory citation to “tinted windows” under the wrong statute underscores that visibility of the front side window was a never a true concern at the time of the stop, but rather a justification added only after *Smith* made clear that 39:3-75 cannot support such stops. Indeed, the body-worn camera footage reveals that the rear side and rear windshield were visibly and significantly darker than the front side window, so dark that visibility through the rear windows was effectively eliminated even with the aid of a flashlight, while the front side window remained clearly transparent (Da50 at 22:25:08-10). This strongly suggests that the initial basis for the stop was the rear window tint, not any legitimate concern about the front windows.

Only at the suppression hearing, after *Smith* had foreclosed the use of 39:3-75 to justify stops based on window tint, did the detective pivot to claim that he observed a violation of 39:3-74 based on the front side windows:

Q. All right. So, you mentioned two issues that you noticed with the car that caused you to pull it over, correct?

A. Yes, sir.

Q. One was tinted windows?

A. Correct.

Q. And which window did you observe having been tinted in that vehicle?

A. The front side windows of the vehicle.

Q. And to what extent were they tinted?

A. They were tinted that it prevented me from clearly seeing into it.

Q. Were they tinted such that you believe they were in violation 39:3-74?

A. Yes, sir.

Q. And 39:3-75?

A. Yes, sir.

(1T:12:10-13:1). The officer's retroactive effort to reframe the stop as one based on front window tint, despite the absence of any such claim in the contemporaneous record, undermines the credibility of the State's asserted justification. Rather, it suggests a *post hoc* attempt to retrofit the facts to conform with the legal standard newly clarified in *Smith*. While the timing of the articulation is not dispositive, the belated shift further underscores that even this new rationale fails to satisfy *Smith*, because the officer's later description confirms that he could see into the vehicle through the front side window (1T:15:13-16:6).

Although *State v. Smith* had not been decided at the time of the stop, it applies here under the doctrine of pipeline retroactivity. *State v. Haskins*, 477 N.J. Super. 630, 646 (App. Div. 2024) (holding that *Smith* announced a new rule of law to be given pipeline retroactivity); *Lanziano v. Coccoziello*, 304 N.J. Super. 616, 624 (App. Div. 1997) (explaining where a decision has pipeline retroactivity, it applies to all pending cases, whether on appeal or in the trial court). Because the suppression hearing occurred after *Smith* was decided, the Court's holding governs the legality of the stop in this case.

At that hearing, Detective Kulis testified that as he approached the driver side of vehicle on foot, the window was still rolled up. Nevertheless, he observed Mr. Smith making movements inside:

Q. And what did you do at the time that vehicle pulled over in front of you or stopped in front of you?

A. Well I stopped my police vehicle. I exited my patrol vehicle. As I was approaching the vehicle, I took out my flashlight to get a better view because I couldn't see clearly into the car.

Q. And what did you do with that flashlight?

A. I illuminated the vehicle and as I walked closer, I observed movement in the vehicle.

Q. All right. And when you say movement, are you talking about movement of the driver or any passengers within the vehicle?

A. The driver. (Indiscernible) the driver.

Q. And what, if anything, did you observe the driver doing as you illuminated the interior of the vehicle as you approached?

A. It appeared like he was with his right hand like a downward motion, like going between the seat and the center console.

* * *

Q. Did he roll his window down?

A. Correct

Q. Or was it rolled down?

A. No it wasn't rolled down. When I approached the car and when I almost got to the car and when I almost got to the car, that's when he rolled down the window.

(1T:15:13-16:6; 17:23-18:3).

Given that the stop occurred at approximately 10:30 p.m., it is unlikely the officer could have seen clearly into the car without artificial illumination, irrespective of tint (1T:11:19-23). In fact, a review of the video footage confirms that it was simply too dark out to see clearly into the front window without artificial light (Da50 at 25:05-11). But under *State v. Smith*, the relevant question is not whether ambient lighting conditions obstructed visibility, it is whether the *window tint* prevented visibility. See *State v. Arias-Made*, A-0875-19, 2022 WL 3330178, * 8 (App. Div. Aug. 12, 2022) (concluding, after reviewing the video, that the pre-dawn hour would have prevented the officer from seeing into the window regardless of tint) (Da53-60).

A flashlight, like headlights or daylight, merely serves to illuminate the car's interior. If the officer was able to observe the defendant's movement through the window with the aid of a flashlight, then the window was not so darkly tinted as to raise reasonable suspicion under N.J.S.A. 39:3-74.

The point is further illustrated by the distinction between Mr. Smith's rear and front window. The officer's flashlight revealed no visibility through the rear

window, a fact plainly captured in the body-worn camera footage, while the front window allowed clear observation of the driver's movements under the same conditions (Da50 at 22:25:08-11) This contrast reinforces *Smith's* core holding: if officers are able to see into the vehicle, even with the aid of artificial lighting, then the tint is not unlawfully dark under N.J.S.A. 39:3-74. Here, the officer could not see through the rear windows even with a flashlight but could observe the driver's movements through the front window under identical conditions. The Supreme Court addressed precisely this scenario:

The facts of this case provide an illustrative example of window tint that does not meet the definition of the statutory term "non-transparent." Detective Dalles testified that despite the tinting on the defendant's windshield, he was able to see, with just the police SUV's headlights and the street lighting that there was only one person in the vehicle and that the person was making movements. Such a degree of window tint--which allows the officer to see both the number of people in the vehicle and their movements--is not "non-transparent" within the meaning of the statute.

Id. at 265-66.

The visibility here was materially identical. Detective Kulis observed the defendant's movements through the closed driver's side window using a flashlight, just as the officers in *Smith* did using headlights. That level of observation defeats any claim that was window was so darkly tinted as to support reasonable suspicion under N.J.S.A. 39:3-74.

Moreover, in its brief to the trial court, the State acknowledged that the officer observed furtive movements through the driver's side window before it was lowered, further confirming that the tint was not so dark as to obscure visibility:

Det. Kulis approached the driver's side of the Nissan while Officer Cahill approached the passenger's side. Each illuminated the interior of the Nissan with their flashlights as they approached. Det. Kulis immediately observed the driver, defendant Ronald Smith, through the tinted windows appearing to stuff an object with his right hand between the driver's seat and the center console. The defendant lowered his window and provided his documents as requested.

(Da52). This constitutes an evidentiary admission that directly undermines the State's claim that the tint violated N.J.S.A. 39:3-74. Factual statements made in a party's brief, particularly when unambiguous and based on testimony, may be treated as evidentiary admissions. *See State v. Ball*, 268 N.J. Super 72, 122 (App. Div. 1993) ("That acknowledgment constitutes an evidentiary admission..."); *see, also, United States v. Maury*, 695 F.3d 227, 258 (3d Cir. 2012) ("Statements in briefs may be treated as evidentiary admissions when they involve intentional concessions of fact."). By conceding that the officer could observe movement through the closed tinted window, the State essentially admits that the windows were not so dark as to obstruct visibility, thereby eliminating any credible basis for concluding the window tint gave rise to reasonable suspicion.

In short, the officer's own testimony, combined with the State's post-hearing concession, confirms that the tint did not obstruct visibility to the degree required

under *Smith*. The ability to observe a person's movements inside a vehicle, even at 10:30 p.m. and with the aid of a flashlight, defeats any claim that the window tint violated N.J.S.A. 39:3-74. Visibility achieved through artificial lighting remains visibility, and under *Smith*, that is dispositive. Having established that the stop cannot be justified on the basis of window tint, this Court must next assess whether the alleged failure to signal provides a lawful alternative basis. As shown below, it does not.

B. The alleged failure to signal did not justify the stop because no traffic was affected and the officer misunderstood the statute.

Under the New Jersey motor vehicle code, a driver is required to signal a turn "in the event any other traffic may be affected by such movement." N.J.S.A. 39:4-126. This language imposes a dual requirement: (1) that the driver fail to signal, and (2) that the failure may affect other traffic. The New Jersey Supreme Court has consistently interpreted motor vehicle statutes according to their plain language. Thus, a turn made without signaling does not violate the statute unless it may have impacted the movement or awareness of other road users. *See State v. Williamson*, 138 N.J. 302, 304 (1994).

Detective Kulis did not testify that any traffic was present or affected by Mr. Smith's right turn onto East Paul from Martin Luther King Boulevard. On cross-examination, he first said that he didn't think there was any traffic behind Mr. Smith, and then said he did not recall any traffic behind the Nissan or exiting East

Paul at the time of the turn (1T:69:22-70:20, 74:15-75:5). His testimony offered no concrete evidence of other drivers whose movement or awareness could have been impacted by the turn.

Not only did the officer fail to identify any affected traffic, but he also misunderstood the statute's plain language. When presented with the statutory text, the detective expressed confusion and appeared unaware of the "affected traffic" requirement. He even questioned the legitimacy of the statute defense counsel showed him, copied directly from Westlaw, suggesting a mistaken belief that the requirement was fabricated (1T:71:20-75:23).

This testimony confirms that the officer stopped Mr. Smith based on an incomplete and incorrect understanding of the law, which cannot satisfy the reasonable suspicion standard. New Jersey has explicitly declined to follow *Heien v. North Carolina*, 574 U.S. 54 (2021) See *State v. Carter*, 247 N.J. at 534 (rejecting *Heien* and holding that "reasonable suspicion cannot be grounded in a misunderstanding of the law"). Because the officer misunderstood the statute's core requirement and could not identify any vehicle that was affected by the turn, the stop was unlawful under settled New Jersey precedent.

Nor can the stop be salvaged by reference to the officer's own vehicle. The patrol car was parked, facing southbound on the opposite shoulder, and was not in motion (1T:65:22-66:10). While *Williamson* acknowledged that a police vehicle

may constitute “traffic” under 39:4-126, that is true only when the vehicle is actually present and positioned such that it might be impacted by the turn. *See State v. Scriven*, 226 N.J. 20, 34 (2016) (holding that an unoccupied, parked police vehicle on a perpendicular street did not qualify as an oncoming vehicle under the high beam statute, N.J.S.A. 39:3-60, because it was not positioned to be impacted); *State v. Richardson*, No. A-4608-19, 2022 Westlaw 3380968, *3 (App. Div. Aug. 17, 2022) (unpublished) (reversing a conviction where the officer’s patrol car was not in a position to be affected by defendant’s lane change, because it was not behind the defendant but was traveling in the opposite direction) (Da61-63). Here, the officer was merely observing traffic from a stationary position on the shoulder. A parked vehicle, not behind or approaching the turning vehicle, does not meet the standard and cannot be retroactively used to justify the stop.

The State also attempted to justify the stop by eliciting testimony about two cars on East Paul, vehicles that appeared *only after* Mr. Smith had already completed the turn, pulled over, and the officer had exited his vehicle and was approaching the Nissan (2T:40:9-41:24). One passed Detective Kulis while he stood outside his patrol car. The other--whose headlights were faintly visible—was located at the far end of East Paul, a few blocks from the traffic stop (Da50 at 22:25:05). This argument borders on farcical. Neither car was present at the time of the turn, and neither could have been affected by it.

The trial court adopted a similar rationale, concluding that the police car was “in the vicinity” and that the two cars observed after the officer had exited his vehicle constituted “vehicles on the road” (3T:10:11-17). This reasoning reflects a misapplication of both the statutory standard and *Williamson*. The statute requires that failure to signal affect other traffic, not merely occur near it. “Vicinity” alone is not enough. A vehicle must be positioned such that it may actually be impacted by the turn. Accepting speculative, *post hoc* traffic as a substitute for this standard expands the statute beyond its plain meaning and undermines the requirement of objective, contemporaneous facts.

Reasonable suspicion must exist at the moment of the stop, not be reverse-engineered from events occurring afterward. *See State v. Boone*, 479 N.J. Super. 193, 210 (App. Div. 2024) (holding that generalized observations without concrete details are insufficient to establish reasonable suspicion for a traffic stop). References to traffic observed only after the stop are speculative and temporally disconnected from the alleged violation. Likewise, treating a parked police car as affected traffic distorts the statute’s plain meaning and invites arbitrary enforcement.

In short, the stop cannot be upheld based on a statute the officer misapplied involving traffic that never existed, and circumstances reconstructed only in

hindsight. When basic legal thresholds are this clearly unmet, the Fourth Amendment requires suppression.

C. The pretextual nature of this stop requires heightened scrutiny and strict adherence to constitutional standards.

The context of this stop further underscores the importance of strictly applying constitutional and statutory limits. As the officer testified, this was not a routine patrol stop. Rather, it occurred as part of a directed enforcement initiative in a designated high crime area, where officers were assigned to pull over vehicles for minor infractions (1T:9:22-10:18, 60:6-10). In such discretionary, investigatory settings, especially where violations like window tint or turn signals are invoked, courts must take care to ensure that the legal basis for the stop is not assumed or lightly inferred. While pretext alone does not render a stop unconstitutional, it elevates the need for objective legal compliance. As the data and case law show, discretionary stops based on vague or marginal infractions have disproportionately affected Black and Brown drivers, and tinted windows have played a prominent role in facilitating these interactions.

Pretextual vehicle stops based on minor traffic infractions such as tinted windows occupy a well-documented role in the history of racially disparate policing. While traffic stops are the most common interaction Americans have with law enforcement, they do not impact all communities equally. In a study by Charles Epp, Steven Maynard-Moody, and Donald Haider-Markel, the authors

distinguish between “traffic-safety stops” and “investigatory stops.” The former involve safety-related conduct such as speeding or driving under the influence, offenses that require an officer to act. The latter rely on discretionary enforcement of minor infractions, such as tinted windows, expired tags, or failure to signal.

Charles R. Epp, Steven Maynard-Moody & Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* 59-61 (John M. Conley & Lynn Mather eds., 2014).

The data revealed that investigatory stops disproportionately target Black and Brown drivers. *Id.* According to the study, 52% of stops of Black and Brown motorists were investigatory in nature, compared to only 34% of stops of white drivers. *Id.* These types of stops contribute significantly to the mistrust of police within marginalized communities. *Id.* at 143; *see also* Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 *Stan. L. Rev.* 637, 643 (2021) (“[J]udicial doctrines permitting police officers to engage in pretextual traffic stops contribute to a statistically significant increase in racial profiling of minority drivers”).

New Jersey’s own data mirrors these national trends. The Office of Law Enforcement Professional Standards (“OLEPS”), which analyzes every motor vehicle stop conducted by the State Police, found similar disparities. In its Fifteenth Aggregate Report of Traffic Enforcement Activities of the New Jersey

State Police (Aug. 2018), OLEPS reported that stops based on tinted windows disproportionately involved non-white drivers. *Id.* In other words, the window tint statute has been used in practice to stop Black and Brown motorists at far higher rates than their white counterparts. *Id.*

Other jurisdictions have recognized the dangers of this approach and have acted to limit or to prohibit pretextual stops. *See State v. Ochoa*, 206 P.3d 143 (N.M. Ct. App. 2008); *State v. Ladson*, 979 P.2d 833, 842 (Wash. 1999). (“[C]itizens of Washington ... are entitled to hold[] a constitutionally protected interest against warrantless traffic stops or seizures on a mere pretext”); *accord State v. Arreola*, 290 P.3d 983 (Wash. 2012). Municipalities and legislatures across the country have enacted reforms to limit traffic stops based on minor infractions like tinted windows. *See, e.g.,* Va. Code § 46.2-1052(P)(barring stops for tinted window); Los Angeles Police Department Policy: *Limitation on Use of Pretextual Stops* (2022)(prohibiting pretextual traffic stops for minor infractions unless officer has articulable information regarding a serious crime), http://www.lapdpolicecom.lacity.org/030122/BPC_22-042.pdf ; Kallie Cox, *Mecklenburg Sheriff Changes Rules for Traffic Stops by Deputies*, Charlotte Observer (Oct. 5, 2022) (reporting that the Mecklenburg County, North Carolina Sheriff will no longer conduct stops for minor infractions like tinted windows), <https://www.charlotteobserver.com/news/local/crime/article266767031.html#storyl>

ink=cpy; Miriam Marini, *Ann Arbor Adopts Ban on Select Traffic Stops To Help Build Trust with Minority Population*, Detroit Free Press (July 7, 2023) (describing Ann Arbor ordinance prohibiting stops for equipment violations like tinted windows), <https://www.freep.com/story/news/local/michigan/2023/07/07/ann-arbor-ban-traffic-stops-police-minority/70392010007/>.

Although our Supreme Court has not explicitly banned pretextual stops, its decision in *Smith*, issued days after this stop, significantly narrowed the legal grounds for stopping motorists based on window tint. This case illustrates that danger precisely: although the State now claims the front windows justified the stop, the record shows that the officer originally cited only 39:3-75, never mentioned visibility, and failed to specify which windows in the contemporaneous paperwork. The rear windows, heavily tinted and clearly non-transparent, appear to have been the real basis, even though that rationale is no longer legally viable after *Smith*.

The empirical and policy evidence surrounding pretextual enforcement should not be ignored in evaluating the totality of this stop. This case is not an isolated instance; it reflects a broader pattern of discretionary policing practices that *Smith* intended to curtail. Where the evidence shows that the alleged violations did not truly satisfy the legal standards under N.J.S.A. 39:3-74 or 39:4-126, suppression is not only constitutionally required, but also necessary to reinforce the

limits our courts have imposed on arbitrary enforcement. *See State v. Carter*, 247 N.J. at 523; *State v. Carty*, 170 N.J. at 639.

POINT II

EVEN IF THE STOP WERE VALID, THE OFFICER LACKED A LAWFUL BASIS TO FRISK MR. SMITH (Court ruled at 3T:21:11-22:10)

Whether a frisk was justified under *Terry v. Ohio*, 392 U.S. 1 (1968) is a question of law subject to *de novo* review. *See State v. Watts*, 223 N.J. 503, 516 (2015). A pat-down during a traffic stop is permissible only when an officer can point to specific and articulable facts giving rise to a reasonable belief that the individual is armed and dangerous. *Terry*, 392 U.S. at 27; *State v. Mai*, 202 N.J. 12, 25 (2010). The “sole justification” for a pat-down is officer safety, not criminal investigation *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993). And while an officer is permitted to order a driver out of the car during a valid stop, there is no corresponding automatic authority to frisk. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

Here, the officer cited several generalized factors, furtive movement, delayed compliance, and the time of night, but never acted on them immediately (1T:16:21-17.2, 19:4-20:3, 2T:35:1-7). Instead, the officer approached the car calmly, engaged in a routine exchange, asked for documents, requested the back windows be lowered, shone a flashlight into the interior, commented on the smell

of smoke, and requested insurance, all before ordering Mr. Smith out of the car (Da50 at 22:25:10-26:25). At no point during that extended interaction did the officer express concern for his safety or behave as though he perceived an imminent threat. These observations, even if assumed true, were not accompanied by any immediate response.

That delay is fatal. If the officer truly believed Mr. Smith posed a danger, he would have acted immediately. His choice to engage in standard, uninterrupted inquiry instead, lasting over one minute, undermines the claim of objective, contemporaneous danger. As the Ninth Circuit explained in *United States v. I.E.V.*, “[t]he officer’s failure to act immediately upon observing the movement strongly suggests that he did not perceive an immediate threat to his safety.” 705 F.3d 430, 439 (9th Cir. 2012). The same logic applies here. The *Terry* standard requires immediacy, not hindsight rationalizations.

Even considered collectively, the officer’s observations do not rise to the level of reasonable suspicion. The so-called “furtive movement” was revealed, once the window was down, to be a lawful and predictable gesture: retrieving a wallet from his back pocket (Da50 at 22:25:10-13). Courts have repeatedly held that ambiguous hand motions do not justify a frisk. *See State v. Rosario*, 229 N.J. 263, 276-77 (2017); *United States v. McCoy*, 498 F.3d 413, 420 (1st Cir. 2007) (movement toward a center console is “also consistent with reaching for a driver’s

license or registration, a perfectly lawful action”). That ambiguity disappeared before the frisk ever occurred.

Likewise, the claim that Mr. Smith delayed pulling over does not support a frisk. He traveled no more than 306 feet (slightly longer than a football field) between the intersection of Martin Luther King Boulevard and East Paul Avenue, where he turned, and the intersection of East Paul and Chase Street, where he stopped (2T:31:6-15). *See* Google Mapps, <https://www.google.com/maps> (last visited 5/15/2025) (measuring distance between Martin Luther King Boulevard and Chase Street via East Paul Avenue in Trenton, New Jersey as approximately 306 feet). Importantly, some portion of that distance was travel before the officers initiated the stop. Detective Kulis was parked on Martin Luther King Boulevard and only began following after Mr. Smith had already turned onto East Paul (1T:65:22-66:16). Thus, the police car was not behind Mr. Smith when he began driving on East Paul, and he could not have been expected to pull over until the officers caught up and activated their lights (2T:31:3-5). That limited distance, some of it occurring before the stop was even initiated, is entirely consistent with locating a safe place to pull over, not evasion.

Finally, while the trial court added that the stop occurred in a high-crime area, that does not justify a frisk in the absence of concrete individualized danger (3T:22:11-19). *State v. Privott*, 203 N.J. 16, 29 (2010); *State v. Garland*, 270 N.J.

Super 31, 43 (App. Div. 1994) The officer never cited the neighborhood's crime rate as a basis for frisking Mr. Smith. He mentioned it only to explain why officers were conducting motor vehicle enforcement in the area (1T:9:22-10:4).

The bottom line is simple: the officer's stated reasons were not just weak; they were also stale. Whatever concern he may have had before reaching the car dissipated once he engaged with Mr. Smith. The calm, compliant, and uneventful interaction provided no basis to proceed with a frisk. Because the officer lacked specific and articulable facts to support a reasonable belief that Mr. Smith was armed and dangerous at the time of the frisk, the intrusion was unconstitutional. All evidence recovered as a result must be suppressed.

POINT III

THE OFFICER'S MANIPULATION OF THE OBJECT IN MR. SMITH'S POCKET VIOLATED THE PLAIN FEEL DOCTRINE (Court ruled at 3T:11:21-12:25, 20:6-21:1, 22:11-23:2)

A protective pat-down may be conducted solely to detect weapons and ensure officer safety. If, during a lawful *Terry* frisk an officer feels an object whose incriminating character is "immediately apparent," the item may be seized under the "plain feel" doctrine. *Minnesota v. Dickerson*, 508 U.S. at 375-76; *State v. Evans*, 235 N.J. 125, 136 (2018). However, once it is clear the item is not a weapon, and its identity is not immediately apparent through lawful touch, any

further manipulation exceeds the scope of *Terry* and renders the seizure unconstitutional.

The body-worn camera footage and the officer's own conduct confirm that the pat-down of Mr. Smith extended far beyond the scope permitted under *Terry* and the plain feel doctrine. Mr. Smith was ordered out of the car at 22:26:25 and was fully out by 22:26:40 (Da50). Within seconds, he was placed against the side of the vehicle and the frisk began (*Id.*). At 22:26:50, the officer is visible in the car's reflection patting down Mr. Smith's left side (*Id.*). By 22:26:55, the officer reaches Mr. Smith's right pants pocket, the pocket that would eventually yield contraband. He remains there for approximately three seconds, clearly pressing and squeezing the object before moving on (*Id.*).

After briefly patting the rest of the right leg, the officer returns to the right pocket at 22:27:00 and resumes manipulation (*Id.*). He appears to remain focused on that pocket, either continuously or intermittently until at least 22:27:35 (*Id.*). The footage shows renewed contact to the pocket at 22:27:11 and 22:27:27 (*Id.*). Finally, at 22:27:35, the detective asks, "What's here?" and Mr. Smith responds, "Coke" (*Id.*). Although some portions of the frisk are obscured by the close camera angle, the repeated and sustained probing are plainly visible.

At the suppression hearing, the officer testified that he believed the item in Mr. Smith's pocket was crack cocaine based on its hard, rock-like feel and its

spherical shape (1T:20:8-21:5). He stated that in his experience, having felt crack cocaine approximately 250 times, the object was consistent with that substance (1T:21:6-24). But he did not testify that the object's identity was immediately apparent to him upon first touch, nor did the body-worn camera support that inference. The officer returned to the same pocket several times before confronting Mr. Smith with the question, "What's here?"—a full 40 seconds after the initial contact. That sequence of probing, delay, and inquiry undermines any suggestion that the item's character was obvious from the outset.

Although the trial court credited the officer's testimony and emphasized the frisk lasted under one minute, that framing obscures the constitutional flaw (3T:22:11-23:5). The question under *Dickerson* is not whether the frisk was brief, or whether the officer had experience with narcotics. It is whether the incriminating character of the object was *immediately apparent* through lawful touch. This is a legal standard, subject to *de novo* review. See *Evans*, 235 N.J. at 136. Repeated manipulation of a small object, roughly the size of a quarter, does not satisfy that standard.

While the trial court noted that the video does not definitively show the officer inserting his hand into Mr. Smith's pocket, that is beside the point (3T:12:12-18). The constitutional violation arises not from whether the officer breached the pocket's threshold, but from the prolonged tactile probing of a small

item that clearly posed no threat. As the Supreme Court explained in *Dickerson*, the plain feel doctrine does not permit “squeezing, sliding and otherwise manipulating the contents of the defendant’s pocket, a pocket which the officer already knew contained no weapon.” *Dickerson*, 508 U.S. at 378. Such continued exploration, the Court explained, was “unrelated to the sole justification of the search under *Terry*, the protection of the police officer and others nearby,” and “therefore amounted to the sort of evidentiary search *Terry* expressly refused to authorize.” *Id.* See also *State v. Toth*, 321 N.J. Super 609, 618 (App. Div. 1999) (Long, J.A.D., concurring) (“As *Dickerson* teaches however, the officer may not manipulate or explore the item, because instantaneous recognition of its identity is what is required for seizure”)

The same is true here. The officer’s extended handling of the object, before asking “What’s here?” and receiving Mr. Smith’s incriminating response was not part of a protective frisk. It was a search for evidence. The court’s conclusion that officer’s “recognition” justified the seizure disregards the limits of the plain feel doctrine and must be reversed.

CONCLUSION

For the reasons set forth above, the trial court erred in denying of the motion to suppress. Because both the stop and the subsequent frisk violated Mr. Smith's rights under the Fourth Amendment and Article 1, Paragraph 7 of the New Jersey constitution, all evidence recovered as a result must be suppressed, and the resulting conviction vacated.

Respectfully submitted,

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Dated: May 21, 2025

Superior Court of New Jersey

**APPELLATE DIVISION
DOCKET NO. A-1867-24T4**

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Final Judgment of
v.	:	Conviction of the Superior Court of New
RONALD C. SMITH,	:	Jersey, Law Division, Mercer County.
Defendant-Appellant.	:	Sat Below:
	:	Hon. J. Adam Hughes, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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October 10, 2025

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COUNTERSTATEMENT OF PROCEDURAL HISTORY

On September 14, 2022, Mercer County Indictment No. 22-09-0571 I was filed, charging defendant-appellant Ronald C. Smith with third-degree possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10(a)(1) (count one); third-degree possession of a controlled dangerous substance with the intent to distribute, contrary to N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(3) (count two); second-degree possession of a firearm while in the course of committing the offense of possession of a controlled dangerous substance with the intent to distribute, contrary to N.J.S.A. 2C:35-5(a) (count three); third-degree possession with the intent to distribute a controlled dangerous substance within 1,000 feet of school property, contrary to N.J.S.A. 2C:35-7 (count four); second-degree possession with the intent to distribute a controlled dangerous substance within 500 feet of a public park, contrary to N.J.S.A. 2C:35-7.1(a) (count five); second-degree unlawful possession of a handgun without a permit to carry, contrary to N.J.S.A. 2C:39-5(b) (count six); and possession of a handgun despite being a certain person not to have weapons, having been convicted of violating N.J.S.A. 2C:35-5(a) on February 1, 2013, a second-degree offense contrary to N.J.S.A. 2C:39-7(b)(1) (count seven). (Da27 to 33).

On January 9, 2023, defendant moved to suppress a handgun and other

evidence. (Da34-35). The motion was denied on April 19, 2023, by the Honorable J. Adam Hughes, J.S.C. (Da36; 3T8-10 to 24-8).¹

On June 15, 2023, defendant pled guilty to count six, second-degree unlawful possession of a handgun. (Da43, Da44).

On January 22, 2025, defendant was committed to the custody of the Commissioner of the Department of Corrections for a term of five years, with a three-year six-month mandatory minimum term under count six, in accordance with the plea agreement. (Da40, Da44).

On February 28, 2025, defendant filed his notice of appeal. (Da1-3).

¹ Defendant's transcript citation is adopted:
1T – Motion transcript – February 21, 2023;
2T – Motion transcript – March 22, 2023;
3T – Transcript of decision – April 19, 2023.

COUNTERSTATEMENT OF FACTS

A. Facts Presented at the Suppression Motion

On June 25, 2022, at approximately 10:20 p.m., Detective Lukasz Kulis, a five-year veteran of the Trenton Police Department, was working with his partner, Officer Cahill, in a marked police car. (1T7-6 to 9-7; 1T63-18 to 20). Detective Kulis was not in uniform, but was identifiable as a police officer by his ballistic vest, which was marked front and back with the identifier “Works for Police.” (1T9-13 to 21). The officers were assigned to focus on enforcing the Criminal Code and Motor Vehicle Code in an area of Trenton, near Martin Luther King, Jr., Boulevard and East Paul Avenue, plagued by shootings and drug crimes and the subject of local citizen complaints. (1T8-14 to 20; 1T9-22 to 10-18).

Seated with his partner at the corner of West Paul Avenue and Martin Luther King, Jr., Boulevard, Detective Kulis saw the driver of a gray Nissan Altima, with tinted front windows, fail to signal as the car turned right onto East Paul Avenue, leading the detective to believe that the driver violated N.J.S.A. 39:3-126. (1T11-23 to 12-4; 1T13-2 to 16; 1T68-17 to 22). The front side windows were tinted to the extent that the detective could not see clearly into the vehicle, leading the detective to believe that the driver was in violation of N.J.S.A. 39:3-74 and N.J.S.A. 39:3-75. (1T12-16 to 25). The officers

positioned the police vehicle behind the Nissan, and activated the lights to conduct a stop. (1T12-1 to 6).

Although Detective Kulis had activated the lights on the police vehicle as soon as the vehicle was positioned behind the Nissan – a few feet past the intersection of Martin Luther King Boulevard and East Paul Avenue – the driver of the Nissan did not pull over right away. (1T13-17 to 14-12). Instead, the Nissan continued to travel slowly for approximately 500 feet until it finally stopped in the middle of the intersection of East Paul Avenue and Chase Street, blocking traffic. (1T14-13 to 15-12).

At that point, Detective Kulis stopped the police vehicle and exited. (1T15-13 to 16). Because Kulis was unable to see clearly inside the car while approaching the Nissan, he took out his flashlight and illuminated the car's interior to get a better view. (1T15-13 to 18). Walking closer, he saw the driver move his right hand in a downward motion between the seat and the center console. (1T15-19 to 16-6).

The hand motion led Detective Kulis to suspect that the driver's failure to immediately pull over was an attempt to buy time and to give himself the opportunity to hide any contraband. (1T16-7 to 20). These actions – the hand motion and the delay in stopping – were red flags that put the trained and experienced detective on high alert, as they indicated that the driver could be

armed and trying to hide an illegal weapon or some other contraband. (1T7-6 to 8-20; 1T16-21 to 17-2).

As Detective Kulis approached the driver, his partner approached the passenger. (1T17-3 to 6). The car had two occupants; both were sitting in the front seat. (1T17-7 to 16). The driver rolled his window down, and Detective Kulis asked him for his documentation. (1T17-17 to 18-3). The driver provided his documents, allowing the detective to identify him as defendant, Ronald Smith. (1T18-4 to 19-2).

Given the red flags, and thinking that defendant could be armed and dangerous, the detective asked him to step out of the vehicle and then patted him down. (1T19-4 to 20-3). During the pat-down, the detective felt a spherical hard object in defendant's right front pocket which Detective Kulis recognized as crack cocaine, a substance the experienced detective had previously felt 250 times. (1T20-4 to 21-15).

When Detective Kulis's hand rested on the object, defendant said, "It's coke." (1T22-3 to 5; 2T35-24 to 36-1). After defendant confirmed that the object was cocaine, the detective placed him in handcuffs and removed the item – crack cocaine inside a knotted plastic baggie – from defendant's pocket. (1T22-5 to 23-4; 2T36-2 to 9). Detective Kulis placed defendant under arrest and continued to search him incident to that arrest, finding \$1,300 in U.S.

currency. (1T23-5 to 13; 2T38-4 to 13). As the detective did not find any items on defendant's person to indicate that the distributable amount of crack cocaine was for personal use, he suspected that defendant intended the cocaine for distribution. (1T23-14 to 24-23).

The detective decided to search the car for additional contraband. (1T24-25 to 26-3). He looked under the seat, which was quite low to the floor, where he found a handgun. (1T26-4 to 13). It took him some time to find the gun, because the driver's seat was lowered all the way to the floor, and the gun was concealed between the wires and an air vent. (2T38-17 to 40-8).

Detective Kulis advised his partner about the gun, whereupon the other occupant of the car was also placed under arrest. (1T26-16 to 20). Kulis retrieved his gloves from the police vehicle and returned to defendant's car, where the officer removed his body camera and photographed the handgun beneath the driver's seat. (1T26-20 to 27-3). Once he had captured the gun on the body-worn camera (BWC), he reached with his left hand under the seat to remove it, which he finally accomplished with some difficulty. (1T27-4 to 15; Da50-22:58:29 to 22:59:15).

The handgun was a black semi-automatic nine-millimeter Glock 43X. (1T27-16 to 25). No live ammunition was found in the chamber, but the ten-capacity magazine contained nine live rounds. (1T28-1 to 12). Defendant had

no license for the gun, nor did he have a permit to carry. (1T28-16 to 18). On reviewing defendant's criminal history, the detective learned that defendant was a certain person not permitted to possess a weapon. (1T28-19 to 23).

The defense presented three witnesses at the hearing: codefendant Dontate Brown; Brown's spouse, Lisa Green; and Detective Michael Staton. Green testified that on June 25, 2022, she received a phone call from her husband and as a result she drove to East Paul Avenue and Martin Luther King Boulevard. (2T49-16 to 50-1). Once in that area, she recorded a video of the incident on her cell phone. (2T50-2 to 52-25). On cross-examination, she testified that her husband had left home approximately 20 minutes before the phone call, that the car belonged to defendant, that defendant was a good friend of her husband and herself, and that her husband did not own a gun. (2T54-11 to 56-17).

Dontate Brown, the passenger in the Nissan, testified that he had known defendant for a long time, and that defendant had picked him up that night and that, when the stop occurred, they were headed to a bar. (2T57-14 to 60-2). Brown testified that he reached into the glove box to get the registration and insurance documents, and that neither the officers nor the car's occupants displayed any discourtesy during the encounter. Brown did, however, testify that he had used profanity when he was handcuffed, because at the time he had

no idea that a gun had been discovered inside the car. (2T62-23 to 63-25).

Brown also testified that a white cup seen in the video was empty, although it had recently contained Remy Martin Cognac. (2T65-17 to 25).

On cross-examination, Brown denied knowing the proof of the cognac, and denied any recent smoking by either of the car's occupants. (2T66-12 to 73-4). Brown also testified that he and defendant were good friends, and admitted that he would like to help him. (2T73-5 to 17). Brown acknowledged that defendant had pulled over in the middle of the intersection. (2T76-9 to 14).

Detective Staton testified that he brought the cocaine seized during the car stop from the evidence locker to the courtroom. (2T81-19 to 82-3). At the hearing, the judge manually manipulated the rock of cocaine inside the evidence bag. (2T82-4 to 20).

B. The Motion Court's Ruling on the Suppression Motion.

a. The Motion Court's Findings of Fact

After the evidentiary hearing and briefing, the motion judge presented his decision. (3T8-1 to 25-8). The court summarized the procedural history of the case, and gave a detailed account of his findings on the credibility of each of the witnesses. (3T8-1 to 9-25). Before addressing the credibility of each witness in turn, the judge explained the considerations underlying his

credibility findings, such as the witnesses' interests in the case, the accuracy of their recollections, their ability to know what they were testifying about, the reasonableness of their testimony, their demeanor and candor, their willingness or reluctance to answer, the inherent believability of the testimony, and whether the testimony of the witness contained any inconsistent, contradictory or corroborative statements. (3T8-19 to 9-1).

The court found that Detective Kulis testified in a direct manner, he thought about the question before answering, and he answered precisely when he could answer, but admitted when he did not know an answer. (3T9-2 to 7). Although at one point Kulis seemed to question the cross-examination topics, he ultimately answered the questions put to him, had a basis of knowledge for his answers, and did not embellish. For these reasons, the judge found Detective Kulis credible. (3T9-8 to 13).

As for the defense witnesses, the court found them credible as well. Lisa Green was found credible, as she spoke directly and did not embellish her testimony and had a basis of knowledge. (3T9-14 to 17). Dontate Brown was candid, and although he too appeared to question the relevancy of some of the questioning, he did answer the questions asked, and was found to be credible. (3T9-18 to 22). Detective Staton's testimony, although very limited, also was deemed credible. (3T9-23 to 25).

Based on its review of the evidence, the court found that, on the night in question, Detective Kulis was on duty in a marked police vehicle in a high crime area known for shootings and drug violations. (3T10-1 to 6). At approximately 10:20 p.m., the detective observed defendant's vehicle with tinted front side windows and observed that the driver did not signal when making a turn onto East Paul Avenue. (3T10-7 to 10). The tinted windows prevented the detective from seeing clearly into the car. (3T10-11 to 12). The detective did not remember if there was any other traffic, but the body-worn camera video showed other vehicles on the road and the police vehicle was clearly in the vicinity of the turn. (3T10-13 to 17).

The detective tried to pull the car over at the intersection of Martin Luther King Boulevard and East Paul Avenue, but the car continued to travel slowly for 300 to 500 feet, ultimately coming to a stop in the middle of the intersection of East Paul and Chase, blocking traffic. (3T10-18 to 24). Approaching the stopped car, the detective illuminated the interior of the vehicle with a flashlight. (3T10-25 to 11-2). The officer testified that he saw the driver move; it appeared that the driver was hiding something between the driver's seat and the center console with his right hand. (3T11-3 to 5).

The court noted that the defense had pointed out that, in the video at approximately 22:25:10, defendant could be seen pulling his wallet out of his

right pocket with his right hand. (3T11-6 to 9). Detective Kulis said he suspected contraband because the driver took extra time to pull over and movement in the vehicle appeared to be an effort to hide something. In addition to arousing a suspicion of contraband, it alerted the officer to the possibility of a weapon inside the car. (3T11-9 to 14).

The court noted that the video did not depict what was occurring inside the car as the officer approached and shined the flashlight into the driver's-side window. (3T11-15 to 18). When the officer asked for the driver's credentials, defendant complied. (3T11-19 to 20). Thinking that defendant might be armed, the officer asked him to step out of the car to allow the officer to conduct a pat-down frisk. (3T11-21 to 24).

During the frisk, the officer felt something in the right front pocket that he recognized as a controlled dangerous substance – specifically, a hard rock-like spherical substance that the detective believed to be crack cocaine. (3T11-25 to 12-3). Detective Kulis described it as bigger than a quarter and also explained that he had felt crack cocaine approximately 250 times in his career. (3T12-3 to 6). While the detective was frisking defendant, defendant confirmed that the item in his pocket was an illegal drug when he said, “Coke.” (3T12-7 to 9). Detective Kulis handcuffed defendant and removed the item from his pants pocket. (3T12-9 to 11).

Although defense counsel argued that it took approximately a minute to pat down defendant until the detective pulled out a small plastic bag, the motion court found that it was not clear from the video evidence how long the pat-down lasted, nor was it clear exactly what had happened before the bag was removed, because the video did not always show the detective's hands. (3T12-12 to 18). The evidence nevertheless indicated that the touch observation as testified by Detective Kulis clearly occurred in less than a minute and that a plastic bag – with a substance allegedly matching the detective's earlier touch observation – was removed from defendant's pants pocket. (3T12-19 to 25).

Detective Kulis also found more than \$1,300 in defendant's possession and did not find any paraphernalia that could be used to ingest the drugs. (3T13-1 to 3). The parties disagreed about the weight of the suspected cocaine, with defense counsel arguing that it was closer to one gram than to the reported more-than-nine grams that the officer believed it weighed. (3T13-4 to 7). Counsel noted that the motion judge had held the specimen while it was still inside the evidence packaging, and although it appeared to the judge that the drugs weighed somewhat less than the purported nine grams, the judge pointed out, citing 31 U.S.C. § 5112 (a) (3), that a United States quarter

weighs 5.67 grams, which appeared to be a reasonable reference point, given the specimen and the detective's testimony. (3T13-8 to 14).

Finally, the officer searched the vehicle for a weapon or contraband based on the circumstances, including observations of movement inside the stopped vehicle, how the car pulled over, discovery of CDS and currency on defendant and the absence of any paraphernalia discovered during the pat-down. (3T13-15 to 20). Ultimately, the officer found a handgun in the space between the driver's seat and console as shown in the video evidence at, for example, approximately 22:58:34 and 22:59:06. (3T13-21 to 24). The judge noted that the gun was found below the area where the officer said defendant had reached when he was being pulled over. (3T13-25 to 14-1).

b. The Court's Legal Ruling

The motion court explained that the Fourth Amendment of the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution, using almost identical language, protect against unreasonable searches and seizures. (3T14-2 to 7) (citations omitted). Under both constitutions, warrantless searches are presumed unreasonable and, to overcome that presumption, the State must show by a preponderance of the evidence that the search falls within one of the well-recognized exceptions to the warrant

requirement, such as the automobile exception. (3T14-8 to 23) (citations omitted).

Under the automobile exception, a police officer must have a reasonable and articulable suspicion that someone in a vehicle is committing a motor vehicle violation or a criminal or disorderly persons offense. (3T14-23 to 15-5) (citations omitted). Under New Jersey's automobile exception, the circumstances giving rise to the probable cause must be both unforeseeable and spontaneous. (3T15-6 to 13) (citing State v. Witt, 223 N.J. 409, 447-48 (2015); State v. Rodriguez, 459 N.J. Super. 13, 22 (App. Div.), certif. denied, 238 N.J. 486 (2019)).

The motion court explained that, to establish a reasonable suspicion of a tinted windows violation under N.J.S.A. 39:3-74, the State must present evidence that tinting on the front windshield or front side windows inhibited an officer's ability to clearly see the vehicle's occupants or articles inside. (3T15-14 to 21) (citing State v. Smith, 251 N.J. 244, 266 (2022)). As for the failure to use a turn signal under N.J.S.A. 39:4-126, that statute requires a motorist to signal a lane change whenever any other traffic may be affected, the State "need not establish that the move actually affected traffic" and "other traffic" could include the police vehicle. (3T15-22 to 16-6) (quoting State v. Williamson, 138 N.J. 302, 303-04 (1994)).

Beyond the automobile exception, the motion court discussed the standards for investigatory stops, or Terry stops, as recognized in Terry v. Ohio, 392 U.S. 1 (1968). (3T16-7 to 15). And to conduct a Terry pat-down, an officer must have some reason to believe, based on specific, articulable facts and their inferences, that he or she is dealing with an armed and dangerous individual; if so, the officer is entitled to conduct a carefully limited search of the person's outer clothing in an attempt to discover a weapon which might be used to assault him or her. (3T16-16 to 17-18) (citing cases). Furtive movements alone are insufficient, and the detention may not be based on arbitrary police practices, the officer's subjective good faith or on a mere hunch. (3T17-5 to 18-3).

The motion judge enumerated various factors that have been considered in finding articulable suspicion, including a passenger's hand movement inside his jacket on being pulled over, State v. Bellamy, 260 N.J. Super. 449, 457 (App. Div. 1992), certif. denied, 133 N.J. 436 (1993); the late hour and information that the location is a high crime neighborhood, State v. Butler, 278 N.J. Super. 93, 105 (App. Div. 1994); and a passenger reaching under his seat or towards the center console in a car continuing to travel for two tenths of a mile on the shoulder before finally stopping, State v. Daniels, 264 N.J. Super. 161, 165 (App. Div. 1993). (3T18-4 to 16). The motion judge noted that this

Court has held that, when the suspicious circumstances are equivocal, the Court will strike the balance in favor of the officer's safety. (3T18-17 to 20-5) (discussing Bellamy, 260 N.J. Super. at 457).

Discussing the plain feel doctrine, the judge stated that an officer may seize contraband found during the course of a lawful pat-down without a warrant if, during the pat-down, the officer feels an object with a certain contour or mass that makes its identity immediately apparent. (3T20-6 to 12) (citing State v. Evans, 235 N.J. 125, 138-39 (2018)). The motion court also discussed State v. Bard, 445 N.J. Super. 145 (App. Div.), certif. denied, 227 N.J. 131 (2016), where this Court upheld a search involving a trooper's frisk in the area of the defendant's pocket with his palm. (3T20-13 to 21-1).

The motion judge concluded that there was, in this case, a reasonable and articulable suspicion that defendant committed two motor vehicle violations, based on the officer's testimony about the nature of the front-tinted windows and on the position of the officer's vehicle when he observed defendant turn without a signal. (3T21-2 to 10). The judge explained that the combination of (1) defendant's failure to pull over immediately and his act of driving slowly for a distance until finally parking in an intersection; and (2) the officer's observation of defendant reaching toward the center console after he was pulled over, within the context of providing extra attention in a high

crime area known for shootings, are specific and articulable facts giving rise to reasonable suspicion that the defendant may have been armed. (3T21-11 to 19).

The judge further found that the BWC video had confirmed that defendant's hand was moving in the area of the center console and front seat. Even though defense counsel correctly pointed out that the video depicted defendant pulling out his wallet, it did not show what had happened just beforehand, i.e., while the officer, who was shining his flashlight, approached the vehicle and saw defendant's hand moving in the area of the center console and front seat. (3T21-20 to 22-2). The judge found it clear from the evidence that "both things could be true, that the defendant was attempting to hide something and also pulled out his wallet as the officer was approaching the car." (3T21-20 to 22-6). Based on the totality of the circumstances, the court concluded that the grounds for conducting a lawful pat-down were appropriate and that the balance favored the officer's safety. (3T22-7 to 10).

During the pat-down, the officer felt an object that he recognized as crack cocaine, a substance which the officer had held approximately 250 times. His recognition of the crack cocaine indicated that the seizure of the suspected contraband was, under these circumstances, reasonable. (3T22-11 to 16) (citing Evans, 235 N.J. 125; Bard, 445 N.J. Super. 145). The court pointed out

that defendant also had admitted that the item was cocaine. (3T22-17 to 19) (citing State v. Dangerfield, 171 N.J. 446 (2002)).

The motion judge rejected the defense argument that the pat-down took about one minute and that it was improper in scope. The judge found instead, that the evidence suggested that the frisk of defendant's outer clothing, which occurred in under a minute, was reasonably designed to discover weapons. (3T22-20 to 23-2). No other evidence indicated that the search was somehow impermissibly prolonged, and "a traffic stop's 'tolerable duration' includes the time 'to address the traffic violation that warranted the stop and attend to related safety concerns.'" (3T23-3 to 10) (quoting State v. Carrillo, 469 N.J. Super. 318, 336 (App. Div. 2021) (quoting Rodriguez v. United States, 575 U.S. 348, 354 (2015))).

The motion judge also found probable cause to search the car, given the combination of the driver's failure to pull over immediately, his act of driving slowly for a distance and then parking in the middle of an intersection, and the officer's observation of defendant reaching toward the center console. (3T23-11 to 15). The officer interpreted these circumstances, all in the context of a high crime area known for shootings, as an attempt to hide something. (3T23-15 to 18). All of these circumstances, combined with the discovery of crack cocaine without drug paraphernalia and the \$1,300 cash found on defendant's

person, led the motion court to conclude that there was probable cause to believe the vehicle contained evidence of a criminal offense. (3T23-18 to 22). Additionally, the circumstances giving rise to that probable cause, those being the investigation of a real-time motor vehicle violation, the resulting stop, the defendant's actions, and the discovery of crack cocaine, were unforeseeable and spontaneous. (3T23-23 to 24-4). Under these circumstances, the motion court found the search and seizure reasonable and denied defendant's motion to suppress the evidence. (3T24-5 to 8).

Following the denial of the motion to suppress, defendant pleaded guilty to second-degree unlawful possession of a handgun. This appeal follows.

LEGAL ARGUMENT

POINT I

THE CAR STOP WAS LAWFUL, AS IT WAS BASED ON REASONABLE AND ARTICULABLE SUSPICION THAT DEFENDANT HAD ILLEGALLY TINTED WINDOWS AND FAILED TO USE HIS TURN SIGNAL WHEN REQUIRED UNDER THE MOTOR VEHICLE CODE.

The trial court correctly denied defendant's motion to suppress the gun and cocaine seized from his car and from his person. The court ruled that the police stopped the car based on a reasonable and articulable suspicion that defendant had committed two distinct motor vehicle violations. The car's tinted front windows inhibited visibility and the driver of the car, defendant, made a right turn from Martin Luther King Boulevard onto East Paul Avenue without using his turn signal, even though other traffic might have been affected. (3T21-2 to 10).

Both of these infractions violate the motor vehicle code and the officer's reasonable suspicion that defendant had committed either of them was, in itself, a lawful basis to stop the car. The motion court's factual findings were soundly based on the evidence at the hearing and, as the court's legal rulings

correctly applied the governing law, including the federal and state constitutions, they should be upheld.

The Fourth Amendment to the United States Constitution and Article I, Paragraph 7, of the New Jersey Constitution constrain against unreasonable search and seizure, such as unjustified intrusions or those made in an improper manner. State v. Gathers, 234 N.J. 208, 219-20 (2018). A police officer is justified in stopping a motor vehicle when the officer has an articulable and reasonable suspicion that the driver has committed a motor vehicle offense. State v. Locurto, 157 N.J. 463, 470 (1999). Reasonable suspicion satisfies this standard; the State is not required to prove that the motor-vehicle violation actually occurred. Ibid. In this case, the judge ruled that the stop of defendant's car was based on the officer's reasonable and articulable suspicion that defendant committed two motor vehicle infractions: having unlawfully tinted windows and failing to signal before turning onto East Paul Avenue. (3T21-2 to 10).

An appellate court reviews a trial court's decision on a motion to suppress "under a deferential standard." State v. Miranda, 253 N.J. 461, 474 (2023). When reviewing a trial court's fact findings, this Court does not reweigh the evidence on appeal. State v. Ahmad, 246 N.J. 592, 609 (2021). The motion court's findings are upheld so long as sufficient credible evidence

in the record supports them and are to be disturbed only if clearly mistaken to the point where the interests of justice demand intervention and correction. State v. Robinson, 200 N.J. 1, 15 (2009); State v. Elders, 192 N.J. 224, 243–44 (2007); State v. Johnson, 42 N.J. 146, 162 (1964). The appellate court’s obligation to defer to the lower court’s findings of fact is based on the trial court's opportunity to hear and see the witnesses, giving the trial judge the “feel” of the case, which the appellate court does not share. Johnson, at 161. That long-held standard of deference governs appellate review even when the trial court's findings are based on its review of video evidence. State v. S.S., 229 N.J. 360, 379-81 (2017). A trial court’s legal rulings, however, are examined de novo on appeal. State v. Gandhi, 201 N.J. 161, 176 (2010).

A. The Officer had a Reasonable Suspicion that Defendant’s Car had Tinted Front Windows in Violation of N.J.S.A. 39:3-74 and thus the Stop was Lawful.

The motion court explained that, to establish a reasonable suspicion of a tinted windows violation under N.J.S.A. 39:3-74, the State must present evidence that tinting on the front windshield or front side windows inhibited an officer’s ability to clearly see the occupants or articles inside the vehicle. (3T15-14 to 21) (citing State v. Smith, 251 N.J. 244, 266 (2022)). The court applied this legal ruling to its finding that the tinted front side windows prevented the detective from seeing clearly into the car. (3T10-7 to 12). The

court found the officer credible when he testified that, because he could not see clearly into the car, he took out his flashlight to get a better view. (1T15-15 to 18). The body-camera footage corroborates the officer's testimony. (See Da52, 22:25:04-22:25:07).

Defendant argues that, because the officer did not specify precisely which windows were tinted in the Affidavit of Probable Cause, the credibility of his testimony at the suppression hearing was undermined. (Db10). Yet the officer withstood cross-examination on this subject and Judge Hughes found the officer credible, finding that the front side windows were tinted so as to prevent the officer from seeing clearly into the car. (1T66-13 to 70-10; 3T10-7 to 12; 3T21-2 to 10). Defendant has failed to show very obvious and exceptional error in the factual and credibility findings made by the judge in the Law Division. See State v. Robertson, 228 N.J. 138, 148 (2017).

Defendant argues that the front window is more transparent than the back windows in the video. (Db12-13). That assertion is debatable; in the video it appeared that the front window was illuminated through the front windshield and from the sides by the streetlights, one of which appears to be almost directly across the street, and by the headlamps of an oncoming car. (See Da52, 22:25:04-22:25:07). Even so, the front window does not appear more transparent than the back window until the officer is quite close and

aiming his flashlight at the window where, it appears, he is trying to lift the flashlight high enough to see over the window as it is being lowered. (Da52, 22:25:10). At any rate, the trial court watched the video and found that the front tinted windows prevented the detective from seeing clearly into the car. (3T10-7 to 12). This Court defers to the trial court's findings. E.g., S.S., 229 N.J. at 379-81.

As an appellate tribunal, this Court does not undertake to weigh the evidence, assess witness credibility, or make conclusions about the evidence; rather this Court is restricted to applying the test of whether the trial court's findings could reasonably have been reached on sufficient credible evidence present in the record. Locurto, 157 N.J. at 472. The motion court's factual conclusions, such as the finding that the tint on the front-side windows prevented the detective from seeing clearly into the car, can be disturbed on appeal only if they are obviously mistaken, to the extent "that the interests of justice demand intervention and correction." Johnson, 42 N.J. at 162. Appellate review of credibility and factual findings made by lower courts is exceedingly narrow; they are not altered absent a blatant, exceptional showing of error. State v. Reece, 222 N.J. 154, 166-67 (2015) (citing Locurto, 157 N.J. at 470, 474). Defendant must make this showing of blatant and exceptional error with respect to video evidence as well. S.S., 229 N.J. at 379-81.

Defendant has made no such showing.

Moreover, the trial court's legal ruling should also be upheld. As discussed in the court's opinion, the standard for assessing whether tinted windows violated the statute is set out in State v. Smith, 251 N.J. 244. (3T15-14 to 21). In Smith, the New Jersey Supreme Court held that the term "non-transparent" used in N.J.S.A. 39:3-74 is not impermissibly vague and means that reasonable suspicion of a tinted windows violation arises when a vehicle's front windshield or front-side windows are so darkly tinted that police cannot clearly see people or articles within the car. 251 N.J. at 265.

Defendant argues that the legal standard was misapplied, because the officer was able to observe movement within the vehicle with the aid of the flashlight, which he claims was "materially identical" to the visibility standard defendant argues was the "core holding" of Smith. Defendant suggests that Smith holds that "if officers are able to see into the vehicle, even with the aid of artificial lighting, then the tint is not unlawfully dark under N.J.S.A. 39:3-74." (Db13). That is not, however, the standard presented in Smith. Under Smith, to establish a reasonable suspicion of a tinted-windows violation under N.J.S.A. 39:3-74, the State must present evidence that the tint on the windshield or front-side windows "inhibited officers' ability to clearly see the vehicle's occupants or articles inside." 251 N.J. at 266. The Smith standard

was applied by the trial judge. (3T15-14 to 21).

In addition to the unlawfully tinted front windows, there was also sufficient suspicion to authorize the stop under yet another statute, N.J.S.A. 39:4-126, as defendant failed to signal before turning the vehicle. That violation alone also justifies the stop. See State v. Amelio, 197 N.J. 207, 211 (2008) (reasonable, articulable suspicion of minor traffic offense suffices to support lawful car stop). Thus, even if defendant's claim about the tinted-window statute were valid, which it is not, there was another lawful basis to stop the car based on the failure-to-signal violation.

B. N.J.S.A. 39:4-126 Does Not Require the State to Show that Defendant Actually Affected Traffic by Failing to Signal.

Here, Detective Kulis reasonably suspected that defendant violated N.J.S.A. 39:4-126, requiring a turn signal before turning whenever "any other traffic may be affected by such movement," rather than requiring a turn signal only when traffic actually was affected. This statute requires that

[n]o person shall ... turn a vehicle from a direct course or move right or left upon a roadway... without giving an appropriate signal ... in the event any other traffic may be affected by such movement. A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(N.J.S.A. 39:4-126).

“When traffic may be affected, the driver must signal at least 100 feet before turning.” State v. Heisler, 422 N.J. Super. 399, 413 (App. Div. 2011) (emphasis added).

“N.J.S.A. 39:4–126 is clear and unambiguous when its terms are given their ordinary and well understood meaning.” State v. Moss, 277 N.J. Super. 545, 547 (App. Div. 1994). A key word in the statute, i.e., “may,” has a common ordinary meaning of “to be in some degree likely to.” Ibid. (quoting Webster's Third New International Dictionary 1396 (1981)). The statute’s language “may be affected by such movement” therefore does not require that the turn affected other traffic, merely that it had some potential to do so. Ibid.

This rationale from Moss was adopted by the New Jersey Supreme Court in State v. Williamson, 138 N.J. 302 (1994), where the Court agreed that the State need not establish that the turn actually affected traffic, because that is not required by the language of the statute. 138 N.J. at 304.

The language—may affect traffic—implies that traffic that may be affected is fairly close and visible, and that the signal need not be dictated solely by concerns of safety and accident avoidance. Motorists in the vicinity whose movements may be affected must be made aware of a driver's intentions.

(Ibid.).

The Supreme Court further ruled that the State was not required to prove that a motor-vehicle violation occurred as a matter of law, as “constitutional precedent requires only reasonableness on the part of the police, not legal perfection.” Ibid. So long as the State shows that the police lawfully stopped the car, it need not show that it could convict the driver of the motor-vehicle offense. Ibid. To support a lawful stop, the officer needed only a reasonable and articulable suspicion that defendant's failure to signal may have affected other traffic, which could include the officer’s own vehicle. Ibid.

Here the motion court found that “[t]he detective did not remember if there was any other traffic at the time of the turn without signal, [but] the body-worn [video] evidence shows that there were other vehicles on the road and the police vehicle that the detective was in was clearly in the vicinity of the turn.” (3T10-12 to 17). Defendant was required to make the motorists in those vehicles aware of his intentions by using his turn signal. See Williamson, 138 N.J. at 304.

Moreover, defendant acknowledges that the police vehicle itself is considered “traffic” that “may be affected” under the statute but argues that the police vehicle here did not constitute “traffic,” because the police car was not in motion when defendant made the turn. (Db16-17). Defendant cites as authority State v. Scriven, 226 N.J. 20 (2016), wherein the Supreme Court

decided whether, under certain circumstances, an alleged violation of N.J.S.A. 39:3–60, the high-beam statute, justified a car stop. But Scriven is inapposite.

In Scriven, a police officer stopped a car traveling with its high beams on, but the car had not been approaching an oncoming vehicle as specified in the statute. 226 N.J. at 26. The officer in Scriven was on foot, with his car parked on a perpendicular street, while investigating an abandoned car. Ibid. In fact, the officer testified that the defendant’s vehicle was the only car traveling on the road. Id., at 36. The trial court, this Court, and ultimately the Supreme Court, found that, because the car with its high beams activated was traveling on a street with no oncoming vehicles, the driver had complied with N.J.S.A. 39:3–60 and the police officer lacked a reasonable and articulable suspicion to stop the car. Ibid. The high-beam statute requires the driver to dim a vehicle's high beams when approaching “an oncoming vehicle.” Scriven, 226 N.J. at 25, 35; N.J.S.A. 39:3–60.

No such requirement, that the driver must be approaching an oncoming vehicle, is found in the turn-signal statute. That statute, N.J.S.A. 39:4–126, compels the use of turn signals “in the event any other traffic may be affected by such movement.” N.J.S.A. 39:4–126. The rationale for the statute is that motorists in the vicinity of the turn whose movements may be affected must be made aware of a driver's intentions. Williamson, 138 N.J. at 304.

To support a lawful stop under N.J.S.A. 39:3-126, the officer only needs a reasonable and articulable suspicion that a driver's failure to signal may have affected other traffic, which could include the officer's vehicle. Williamson, 138 N.J. at 304. The "may affect traffic" language implies that "traffic that may be affected is fairly close and visible," and that the turn signal is not dictated solely by concerns of safety and accident avoidance. Ibid. Defendant was obligated by the statute to make the detective, as well as any other motorist in the vicinity as seen on the video, aware of his intentions.

The motion judge's fact findings and legal ruling should be upheld. The court's findings were based on sufficient credible evidence in the record after a full and fair evidentiary hearing. The legal ruling was well in keeping with the applicable law. The decision to deny defendant's motion to suppress the evidence against him should be affirmed.

C. The Stop was Well Within Constitutional Bounds.

Defendant argues that the so-called "pretextual" nature of the stop requires "heightened scrutiny" because, on direct examination at the suppression hearing, the detective testified that "[o]n that shift we were providing extra attention to the area, a high crime area where there have been shootings, distribution of CDS and other violations." (1T9-24 to 10-1). Because police resources were focused in a high crime area, defendant

challenges the legitimacy of the traffic stop for unlawfully tinted windows, and other infractions, saying that the stop was “pretextual” and implying that such traffic stops should be prohibited. (Db19). New Jersey’s Supreme Court, as defendant acknowledges, (Db22), fairly recently scrutinized and defined the statute, N.J.S.A. 39:3-74, in this same context of proactive policing, but declined to take this step. See Smith, 251 N.J. at 257.

In any event, where, as here, the officer enforced the traffic code for the purpose of promoting public safety, the terminology of “pretextual stop” is ill suited in that context. As one court has described it, a “pretextual stop” occurs where the officer’s discretion to make the traffic stop is exercised for some constitutionally infirm reason. State v. Arreola, 290 P.3d 983, 990 (Wa. 2012). A constitutional abuse would occur if police conduct were based on a hunch or on bias or “on race or other suspect classifications, on various types of protected expression, or on other illegitimate factors.” Ibid. But so long as the officer “actually, consciously, and independently determines that a traffic stop is reasonably necessary in order to address a suspected traffic infraction, the stop is not pretextual . . . despite other motivations for the stop.” Id., at 986. An unconstitutional pretextual stop, on the other hand, “disturbs private affairs without valid justification[.]” Id., at 990. But that is not what happened here.

There is nothing constitutionally infirm, nor is there any abuse of discretion, for the police to focus on the safety of a community in a high-crime area, that is, in police conduct focused on protecting residents from shootings, drug distribution and other crimes. See State v. Goldsmith, 251 N.J. 384, 403-04 (2022). Those who live and work in high-crime areas are entitled to police protection. Ibid. “Law-abiding citizens who live and work in high-crime areas undoubtedly want law enforcement to be able to fully execute their duties and protect their communities” even though they “likely do not want the necessary policing of their neighborhoods to occur at the expense of their own constitutional rights[.]” Ibid. To guard against the loss of constitutional rights, our courts will forbid stops based on arbitrariness, an officer’s subjective good faith, or hunches. Id. at 406.

Our Supreme Court, noting that citizens in high-crime communities both need and desire the protection of law enforcement, declined to abandon “presence in a high-crime area” as a legitimate factor to be used when calculating whether reasonable and articulable suspicion exists. Id. at 403. The New Jersey Supreme Court, declining to leave vulnerable residents of dangerous neighborhoods less safe, thus explicitly rejected this notion that the police should be discouraged from enforcing the law in high-crime areas.

Furthermore, rather than delve into an officer’s supposed motives, our Supreme Court has noted that “[t]he objective reasonableness of police officers' actions — not their subjective intentions — is the central focus of federal and New Jersey search-and-seizure jurisprudence.” State v. Bacome, 228 N.J. 94, 103 (2017) (citing Whren v. United States, 517 U.S. 806, 813 (1996)). The proper inquiry is whether the conduct of the officer was objectively reasonable, without regard to his or her underlying motives or intent. Bacome, 228 N.J. at 103; State v. Bruzzese, 94 N.J. 210, 219, cert. denied, 465 U.S. 1030 (1984).

Instead of making assumptions about officers' intentions, the Court explained that the objective reasonableness of a lawful stop ““must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.”” Bacome, 228 N.J. at 103 (quoting State v. Carty, 170 N.J. 632, 639–40 (2002)). “[A] police officer cannot and should not be expected to simply ignore the fact that an appropriate and reasonably necessary traffic stop might also advance a related and more important police investigation.” Arreola, 290 P.3d at 992.

An officer’s reasonable, articulable suspicion of a motor vehicle offense suffices to support a lawful car stop. See Amelio, 197 N.J. at 211; Locurto, 157 N.J. at 470. “A motor vehicular violation, no matter how minor, justifies a

stop without any reasonable suspicion that the motorist has committed a crime or other unlawful act.” State v. Bernokeys, 423 N.J. Super. 365, 370 (App. Div. 2011). This Court should decline defendant’s request to impede lawful enforcement of N.J.S.A. 39:3-74 or N.J.S.A. 39:4–126 by police officers focused on enforcing the law in high-crime areas.

In stopping defendant’s car, the officers were justified by their articulable and reasonable suspicion that the driver failed to signal before turning, in violation of N.J.S.A. 39:4–126, and were also justified in their articulable and reasonable suspicion that the tint on the front windows of his vehicle violated N.J.S.A. 39:3-74. Reasonable articulable suspicion of either of these violations, and certainly of both, sufficed to justify the stop. The court’s denial of defendant’s motion to suppress the gun, cash and cocaine should be affirmed.

POINT II

THE PROTECTIVE PAT-DOWN OF
DEFENDANT COMPLIED WITH THE
STANDARDS OF TERRY V. OHIO.

Defendant claims that the officer did not lawfully conduct the pat-down, because he approached the car calmly and engaged in a routine exchange with defendant before ordering him out of the car. Because the officer conducted the stop in a professional manner, defendant assumes that the officer did not perceive an immediate threat to his safety. Defendant thus argues that the officer's testimony was not credible. The motion judge found otherwise, and ruled that, given the totality of the circumstances confronted by the officer, he was entitled, under Terry v. Ohio, to conduct a protective pat-down of defendant. This Court should uphold the credibility determinations and fact findings of the court below and affirm the denial of defendant's motion to suppress.

When the police tried to conduct a traffic stop of defendant, he delayed pulling over his vehicle. Instead, he drove slowly for some distance, finally stopping the car in the middle of the next intersection. Approaching defendant's car, the officer observed defendant reaching towards the seat and the center console. The officer's observation was confirmed by the motion

judge, who noted that the body camera video confirmed that defendant's hand was moving in the area of the center console and front seat.

Although the judge noted that the defense was correct insofar as the video showed defendant pulling out his wallet afterwards, the video did not show what had happened immediately beforehand, when it looked like defendant's hand was moving near the center console. The judge concluded that "both things could be true, that the defendant was attempting to hide something and also pulled out his wallet as the officer was approaching the car." (3T21-20 to 22-6). The court found that, within the context of providing extra attention in a high crime area known for shootings, these specific and articulable facts — the refusal to stop the car in a timely manner and the hand movement — gave rise to a reasonable suspicion that the defendant may have been armed and dangerous. (3T21-11 to 19). Under all of the circumstances, the court found that the pat-down was based on appropriate grounds and that, when balanced, the circumstances favored police safety. (3T22-7 to 10).

On appeal, defendant argues that the pat-down was not justified under Terry, because "[a]t no point during that extended interaction did the officer express concern for his safety or behave as though he perceived an imminent threat." (Db24). Defendant essentially argues that the officer's calm

demeanor undermines his testimony and the court's credibility ruling and factfinding. The argument should be rejected.

The argument disregards the appellate court's deferential standard of review. See Miranda, 253 N.J. at 474-75. Defendant essentially asks the Court to reweigh the evidence from the hearing, but that is not this Court's role. See Ahmad, 246 N.J. at 609. The motion court's findings are to be disturbed only if clearly mistaken to the point where the interests of justice demand intervention and correction. Robinson, 200 N.J. at 15; Elders, 192 N.J. at 243-44; Johnson, 42 N.J. at 162. That is not the case here; rather, these factual findings and credibility determinations were solidly based on the evidence presented and tested at the suppression hearing.

The court's legal ruling properly applied the governing law. In Terry v. Ohio, 392 U.S. 1 (1968), the United States Supreme Court permitted

a reasonable search for weapons for the protection of the police officer, where he 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.

(392 U.S. at 27).

Certainty is not required, "the issue 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.” Ibid. (citations omitted). Inchoate suspicions or hunches are not permitted, but the officer is entitled to draw specific reasonable inferences from the facts in light of his experience. Ibid.

Here, defendant continued driving slowly when the police attempted to pull him over, finally coming to a stop in the middle of an intersection. Although defendant’s “failure to stop promptly may seem unimportant to a layman,” when the driver of a car being stopped continues to travel in this manner, such an action can be significant to an experienced police officer. State v. Daniels, 264 N.J. Super. 161, 165 (App. Div. 1993). At the very least, this “must ...be accepted as an unusual circumstance.” Ibid. Defendant’s failure to stop was accompanied by his reaching between the seat and the console, indicating that, by failing to stop, defendant could have been buying time to access or hide a weapon. A failure to investigate under these conditions would have been “foolhardy.” See id., at 166.

These facts take on increased significance given that the location was a high crime area known for shootings and other crime. “Although a stop in a high-crime area does not by itself justify a Terry frisk . . . the location of the investigatory stop can reasonably elevate a police officer's suspicion that a suspect is armed.” State v. Valentine, 134 N.J. 536, 547 (1994) (citation omitted). Here, defendant’s delay in coming to a stop and his act of reaching

between the seat and the console occurred while the police proactively focused on an area known for shootings and other crimes.

Defendant argues that the police officer did not act quickly enough to frisk defendant, but rather “approached the car calmly, engaged in a routine exchange, asked for documents, requested the back windows be lowered, shone a flashlight into the interior, commented on the smell of smoke, and requested insurance, all before ordering [defendant] out of the car.” (Db24). But it was entirely reasonable for Detective Kulis and his partner to spend approximately one minute to calmly approach the car, look into the interior of the vehicle and ask for documents. That is, it was objectively reasonable for the officer to follow routine procedures in a professional, calm manner before telling defendant to step out of the car. Indeed, if the police officers did not engage in such reasonable investigative conduct, but instead immediately frisked defendant under these same circumstances, defendant would be challenging that decision on appeal.

Defendant offers no suggestions as to how the officer should have conducted himself; he merely suggests that the officer’s calm professionalism indicates that he was not actually concerned about his safety and was not really looking for a weapon. This argument is just another attempt on defendant’s part to shift the inquiry to the detective’s supposed subjective state of mind.

But, again, this Court evaluates the officer's actions under a reasonableness standard, not through the lens of some hypothetical ulterior motive. See, e.g., Terry, 392 U.S. at 21–22; Bacome, 228 N.J. at 103; Bruzzese, 94 N.J. at 219.

A lawful pat-down requires officers to have reason to believe that they may be dealing with an individual who is armed and dangerous. Terry, 392 U.S. at 27. The police response is then assessed under a reasonableness standard applied to the totality of the circumstances facing the officers, who must make split second decisions in a fluid situation. Bard, 445 N.J. Super. at 157. The officer's actions in this matter were reasonable in every respect. Certain red flags, such as defendant continuing to drive after the officer turned on his police vehicle's lights until finally stopping in the middle of an intersection, and moving his hand between the console and the car seat, gave the officer reason to believe that defendant might be armed and dangerous. The court's denial of the suppression motion should be affirmed.

POINT III

THE CRACK COCAINE FOUND IN DEFENDANT'S POCKET, DURING THE COURSE OF A LAWFUL PAT-DOWN, WAS PROPERLY SEIZED UNDER THE PLAIN FEEL DOCTRINE.

Defendant asserts that Detective Kulis was not permitted to seize the crack cocaine, contending that the detective extended the frisk beyond the permitted confines of the plain-feel doctrine. In doing so, defendant asks this Court to deduce, in part from obscured portions of the camera footage, that the detective probed the object in defendant's pocket repeatedly without knowing what it was. Along with asking this Court to envision the detective's hand movements that cannot be seen on the video, defendant wants this Court to disregard the detective's testimony and the judge's fact-findings. Credibility and fact-finding are, however, within the purview of the motion judge and entitled to deference from this Court on appellate review.

“[C]ontraband found during the course of a lawful pat down may be seized without a warrant if the officer ‘feels an object whose contour or mass makes its identity immediately apparent.’” State v. Evans, 235 N.J. 125, 138 (2018) (quoting Minnesota v. Dickerson, 508 U.S. 366, 375 (1993)). The immediate tactile recognition of contraband is necessary to justify any subsequent search for and seizure of the item. Ibid. This standard was met

here, where “the officer felt an object that he recognized as CDS crack cocaine which he has held approximately 250 times before.” (3T22-11 to 13).

The motion court rejected defendant’s argument that the pat-down was improper in scope, finding that a pat-down lasting under one minute, and confined to defendant’s outer clothing, was reasonably designed to discover weapons. (3T22-13 to 23-2). The judge found that the officer recognized the item, and defendant presented no evidence for the court to rule otherwise, as there was nothing in this record to show that the search was somehow impermissibly prolonged. (3T22-11 to 13; 3T23-2 to 10) (citing cases).

The court’s findings were based on the BWC video and the detective’s testimony on direct-examination that, during the pat-down, he felt a roughly spherical, hard object in defendant’s right front pocket which Detective Kulis recognized as crack cocaine, a substance the experienced detective had felt about 250 times before. (1T20-4 to 21-15). And when Kulis placed his hand on the object, defendant said, “It’s coke.” (1T22-3 to 5; 2T35-24 to 36-1).

Furthermore, the officer denied defendant’s accusation while undergoing thorough cross-examination at the hearing. (2T26-4 to 24; 2T27- 9 to 21). When accused of sticking his hands into defendant’s pockets, Detective Kulis pointed to the video, and told counsel, “I didn’t see my hand sticking in his pocket, sir.” (2T26-4 to 6). Defense counsel played the section of the BWC

video where the detective asked defendant if there were weapons in the car, counsel then asked the detective, “How long does it take you to figure out that someone is not armed?” (2T26-14 to 15). The detective again referred counsel to the video, pointing out that defendant had already at that point admitted to the coke. (2T26-16 to 22).

Defendant renews his claim that the seizure of the rock cocaine from his pocket was unconstitutional, arguing that, according to defendant’s interpretation of the BWC footage, the officer was “focused” on defendant’s right front pocket “either continuously or intermittently” for 35 seconds. (Db27). Defendant repeatedly stated that the officer “returned” to the pocket several times but, in fact, that claim is not borne out by the BWC footage wherein, as defendant acknowledges, the officer’s hands are often not visible because he is standing close behind defendant during the pat-down. It appears from the officer’s changing position that he is moving his hands — the camera is obviously moving. In other words, it is more likely that the camera would have been fairly static if, as defendant portrays, the detective had persisted in continually manipulating the pocket.

Moreover, defendant in this instance is not making a legal argument but is asking this Court to reverse the fact-findings of the motion court, and that clearly is not the court’s role. Miranda, 253 N.J. at 474; Ahmad, 246 N.J. at

609; Robinson, 200 N.J. at 15; Elders, 192 N.J. at 243-44; Johnson, 42 N.J. at 162. This Court instead should defer to the trial court's findings, whether they are based on its review of video evidence or based on the other evidence.

Miranda, 253 N.J. at 474-75; S.S., 229 N.J. at 379-81. In this case, the motion judge himself subjected the rock cocaine to a tactile examination in addition to considering the testimony and viewing the video exhibit. Thus there can be no doubt that the judge had “the feel of the case.” See Johnson, 42 N.J. at 161. The judge found that the detective “recognized” the item as crack cocaine, a finding of fact entitled to this Court’s deference.

Because the plain-feel exception applies when an officer ““feels an object whose contour or mass makes its identity immediately apparent[,]” Evans, 235 N.J. at 138 (quoting Dickerson, 508 U.S. at 375), the motion court correctly applied the correct legal standard to the facts. The denial of defendant’s motion to suppress should be upheld.

CONCLUSION

For the foregoing reasons, the State respectfully urges this Court to affirm defendant's conviction and sentence.

Respectfully submitted,

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