

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0382-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AHADEE R. CAMPBELL,

Defendant-Appellant.

Argued January 10, 2018 — Decided February 7, 2018

Before Judges Koblitcz, Manahan and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No.
14-09-2194.

Lorane L. Posner argued the cause for
appellant (Alan Dexter Bowman, of counsel and
on the brief).

Stephen A. Pagony, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for respondent (Robert D. Laurino,
Acting Essex County Prosecutor; Kayla
Elizabeth Rowe, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

After pleading guilty to second-degree possession of heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3)(a), defendant was sentenced to seven years in prison with a forty-two month period of parole ineligibility. He appeals from the June 24, 2016 judgment of conviction, arguing that his motion to suppress evidence should have been granted. We affirm.

The evidentiary hearing, at which only Detective Mark Dempsey and Trooper Scott Sanders testified, revealed the following facts. Detective Dempsey and Trooper Sanders were on patrol in Newark in an unmarked police car. Detective Dempsey was a member of the Essex County Prosecutor's Office narcotics taskforce. Trooper Sanders worked for the New Jersey State Police and was assigned to the Gangs and Organized Crime North Unit. The police were paired together as part of the Tide-Tag initiative, the goal of which was to suppress crime in specific geographic areas.

At 2:30 p.m., the police observed a silver car with heavily tinted windows execute a right-hand turn without using a turn signal. The police activated their lights and sirens to conduct a traffic stop. Defendant, who was alone in the car, pulled over. Trooper Sanders walked to the driver's side of the car as Detective Dempsey walked to the passenger's side of the car.

The police ordered defendant to lower his windows because the windows were so heavily tinted they could not see inside the car. Defendant complied, but then became defensive. He began to question the police in a combative tone of voice, asking, "Why are you pulling me over?" Although he initially refused, defendant provided his driving credentials. Defendant appeared nervous, looking at his driver's mirrors and driver's side floorboard. He was sweating and breathing deeply.

The police ordered defendant to step out of the car because of his combative nature, his initial refusal to provide his driver's license, and the risk of flight, which posed a danger to them.

When defendant did not exit the car, Detective Dempsey asked defendant for the car keys. Defendant began to place his keys in Detective Dempsey's hand, then immediately took the keys away and placed a key into the car's ignition. Detective Dempsey leaned into the car and placed his left hand on the gearshift to prevent defendant from taking flight. Trooper Sanders, fearing for his life, attempted to pull defendant from the car. Detective Dempsey left his position from the passenger's side window to assist Trooper Sanders in removing defendant from his car. Defendant tried to kick the police while flailing. During the struggle, Sergeant Brian Ruane from the New Jersey State Police arrived at

the scene and pointed his service weapon at defendant. Sergeant Ruane assisted the other two officers in removing defendant from his car.

As the police removed defendant from his car, Detective Dempsey saw a heat-sealed ziplock bag with a white rock-like substance on the driver's side floorboard. Detective Dempsey believed it to be heroin or cocaine because the substance was in rock form and the bag was heat-sealed. Trooper Sanders also saw the suspected drugs. The police issued defendant a summons for having tinted windows.

Defendant does not dispute the appropriate nature of the traffic stop or the plain view sighting of the heroin. Rather, he argues the police used a relatively minor traffic stop as a pretext to improperly force him from his car, allowing for the plain view observation. Defendant argues on appeal:

I. THE WARRANTLESS SEARCH WAS UNREASONABLE
AND ITS FRUITS MUST BE SUPPRESSED.

Our review of the denial of a suppression motion is limited. State v. Handy, 206 N.J. 39, 44 (2011). We review a motion judge's factual findings in a suppression hearing with great deference. State v. Gonzales, 227 N.J. 77, 101 (2016). We "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014). We defer

"to those findings of the trial judge which are substantially influenced by [the] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). The motion judge found both officers credible.

We owe no deference, however, to the trial court's legal conclusions or interpretation of the legal consequences that flow from established facts. Our review in that regard is de novo. State v. Watts, 223 N.J. 503, 516 (2015).

It is objectively reasonable for a police officer to order a driver out of a lawfully stopped vehicle, as removal is only a minor intrusion into a driver's personal liberty. State v. Bacome, 228 N.J. 94, 104 (2017) (citing Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977)). "The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it." Mimms, 434 U.S. at 111. "What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." State v. Bernokeits, 423 N.J. Super. 365, 371 (App. Div. 2011) (quoting Mimms, 434 U.S. at 111).

The officer must use the least intrusive means necessary to effectuate the purpose of the investigative detention, and detention must last no longer than is necessary to effectuate the purpose of the stop. State v. Coles, 218 N.J. 322, 344 (2014). The incidental checks performed by a police officer may not be performed in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. State v. Dunbar, 229 N.J. 521, 533 (2017). In evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria. State v. Dickey, 152 N.J. 468, 477 (1998).

In this instance, sufficient, credible evidence in the record demonstrates the initial traffic stop was legal and the request for defendant to exit his car was objectively reasonable and minimally intrusive. First, as defendant concedes, the initial traffic stop was lawful. See N.J.S.A. 39:3-74. Defendant became agitated and struggled to respond to basic questions. The police observed defendant looking into his mirrors, an indication defendant contemplated taking flight. When asked to exit the car, he did not do so. He refused to relinquish his keys, but rather tried to put a key in the ignition.

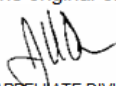
By ordering defendant to exit his car and subsequently ordering defendant to hand over his keys, the police utilized the

"least intrusive means" to "effectuate the purpose" of the traffic stop in a way that did not prolong the traffic stop. Coles, 218 N.J. at 344. Mimms provides the police with the option of allowing the driver to remain in the car during the traffic stop or ordering the driver to exit the car for the traffic stop; here, the police elected to order defendant to leave his car for the traffic stop because his potential flight posed a threat to their safety. The police conduct was reasonably related to the issuance of a traffic ticket. Moreover, only two minutes had passed since the initial traffic stop and the request for defendant to exit his car, making the encounter relatively short.

Defendant acknowledges that if he was properly removed from his car, the plain view sighting of the heroin justified its seizure.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION