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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-2709-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAWRENCE T. ROBINSON, JR., a/k/a
LARRY ROBINSON, TIBBLE ROBINSON
and CHILL ROBINSON,

Defendant-Appellant.

Submitted March 7, 2017 – Decided April 12, 2017

Before Judges Messano and Suter.

On appeal from the Superior Court of New
Jersey, Law Division, Union County, Indictment
No. 11-09-0979.

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

Grace H. Park, Acting Union County Prosecutor
(Kimberly L. Donnelly, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

After his motion to suppress was denied, defendant Lawrence
T. Robinson pled guilty to third-degree possession of a controlled

dangerous substance (CDS) with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3), and was sentenced in accordance with the plea agreement to a four-year term of imprisonment with two years of parole ineligibility.

At the evidentiary hearing on defendant's motion, Sergeant Ronald Fusco of the Plainfield Police Department testified he and his partner, Detective Troy Alston, were on duty in an unmarked car in "plain clothes" when they saw defendant, who Fusco knew from "prior street contacts and investigations," sitting on the porch of a house playing with two puppies. Fusco and Alston exited the car and engaged defendant in conversation. As Fusco spoke to defendant about the dogs, he noticed defendant place a cigarette box on the porch before walking away toward Alston, who was near the curb.

As Fusco played with the dogs, one of them picked up the cigarette box in its mouth, and Fusco saw a bundle of heroin fall from it. Fusco picked up the heroin, grabbed the cigarette box from the dog's mouth and looked inside the open box. He found an additional "eight folds" of heroin. Fusco advised Alston to place defendant under arrest. Defendant also had a small amount of cocaine and marijuana on his person.

Alston testified as a defense witness, and the State called him on rebuttal. He provided little information about Fusco's

actions near or on the porch. Defendant also called a forensic chemist who had performed serologic testing on the cigarette box. She testified that she found no trace of dog saliva on the box.

Defendant testified on his own behalf. According to defendant, he and Alston knew each other, and he called out as Alston drove by and held up one of the puppies. Alston stopped the car, exited with Fusco, and, as defendant was speaking with Alston, Fusco was "snooping around" the house and playing with the puppies. Defendant denied that one of the dogs picked up the cigarette box, asserting instead that Fusco picked it up from the porch, opened it and told Alston to place defendant under arrest. Defendant also claimed Fusco made a call for backup assistance, and several other police officers arrived and searched the house. Defendant admitted the cigarette box and the drugs inside were his.

In her oral opinion, Judge Regina Caulfield extensively reviewed the testimony of each witness. Citing specific testimony by the forensic chemist, the judge concluded, "the fact that the tests were negative for saliva does not mean that the dog did not pick up the cigarette pack." She found defendant's testimony to be incredible and Fusco's and Alston's version of events to be believable.

Judge Caulfield considered whether Fusco's seizure of the packets of heroin fell within the plain view exception to the warrant requirement pursuant to State v. Johnson, 171 N.J. 192 (2002), and State v. Bruzzese, 94 N.J. 210 (1983), cert. denied, 465 U.S. 1030, 104 S.Ct. 1295, 79 L. Ed. 2d 695 (1984). She concluded that "for all intents and purposes," the police officers were invited by defendant to the porch area, and so were "where they were permitted to be." Judge Caulfield found that Fusco's discovery of the heroin was "inadvertent," noting that once a packet fell out of the cigarette box, Fusco had "the right to look in the container." Lastly, the judge found that Fusco "recognized right away" that what fell from the cigarette pack was "obviously contraband," and he had sufficient probable cause to arrest defendant. The judge denied the motion to suppress.

Before us, defendant raises the following arguments:

POINT I

BECAUSE THE TRIAL COURT'S FACTUAL FINDINGS WERE NOT SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE, AND BECAUSE THE DISCOVERY OF THE NARCOTICS WAS NOT "INADVERTENT" AS REQUIRED UNDER THE PLAIN-VIEW EXCEPTION TO THE WARRANT REQUIREMENT, THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.

A. The Lower Court's Factual Findings Were Not Supported By Sufficient Credible Evidence.

B. The Drugs Found in the Cigarette
Pack Were Not Discovered in Plain
View.

After considering the record and applicable legal standards, we affirm substantially for the reasons expressed by Judge Caulfield in her thorough oral opinion. We add the following brief comments.

"Appellate courts reviewing a grant or denial of a motion to suppress 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) (citing State v. Elders, 192 N.J. 224, 243 (2007)). "Thus, appellate courts should reverse only when the trial court's determination is 'so clearly mistaken that the interests of justice demand intervention and correction.'" Id. at 425 (quoting Elders, supra, 192 N.J. at 244 (internal quotation marks omitted)). However, we review the motion judge's legal conclusions de novo. Ibid.

Defendant's essential contention is that Fusco's testimony was unworthy of belief because it was inconsistent with Fusco's prior testimony before the Grand Jury and some of Alston's testimony. Judge Caulfield had the opportunity to see the witnesses and observe their demeanor. She specifically noted that defendant's demeanor contributed to her conclusion that his version of events was not credible. We find no reason to disturb

Judge Caulfield's factual findings. See, e.g., State v. Hubbard, 222 N.J. 249, 262 (2015) ("We defer to those findings of fact because they 'are substantially influenced by [an] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'") (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

We also agree with the legal determination Judge Caulfield reached based upon her fact finding, i.e., that Fusco's seizure of the drugs inside the cigarette package was lawful under the plain view exception to the warrant requirement.

The plain view doctrine requires the police officer to lawfully be in the viewing area. The officer must discover the evidence inadvertently, meaning that he did not know in advance where evidence was located nor intend beforehand to seize it. The third element . . . is that it had to be immediately apparent to the officer that items in plain view were evidence of a crime, contraband, or otherwise subject to seizure.

[Johnson, supra, 171 N.J. at 206-07 (internal citations and quotations omitted).]

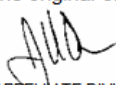
Defendant does not challenge the first or third prong of the plain view analysis. However, he contends Fusco opened the cigarette box with the "explicit purpose to observe any contraband that may or may not have been inside[,]" and hence the discovery was not "inadvertent." We disagree.

To the extent the plain view exception requires the officer's observations be "inadvertent," that standard "is satisfied if the police did not 'know in advance the location of the evidence and intend to seize it,' essentially relying on the plain-view doctrine only as a pretense." Id. at 211 (emphasis added) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 470, 91 S. Ct. 2022, 2040, 29 L. Ed. 2d 564, 585 (1971)); see also Bruzzese, supra, 94 N.J. at 236 ("[T]he officer has to discover the evidence 'inadvertently,' meaning that he did not know in advance where evidence was located nor intend beforehand to seize it.") (citing Coolidge, supra, 403 U.S. at 470, 91 S. Ct. at 2040, 29 L. Ed. 2d at 585).¹

Here, Fusco testified that when he seized the cigarette box from the dog's mouth, it was open and he could see the heroin bundles inside. Judge Caulfield accepted that testimony as credible and concluded that the cigarette box was open, permitting Fusco to lawfully look in and see the remaining heroin packets.

Affirmed.

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


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¹ Since the hearing in this case, the Court has eliminated the inadvertence prong as a necessary component of plain view analysis. State v. Gonzales, 227 N.J. 77, 101 (2016). The "reformulated plain-view doctrine," however, applies prospectively. Ibid.