

**NOT FOR PUBLICATION WITHOUT THE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-3278-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES M. TURNER,

Defendant-Appellant.

Submitted February 27, 2018 - Decided March 16, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
14-11-1345.

Joseph E. Krakora, Public Defender, attorney
for appellant (Frank M. Gennaro, Designated
Counsel, of counsel and on the brief).

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Following the denial of his motion to suppress evidence of a
gun, defendant pled guilty to unlawful possession of a handgun,

N.J.S.A. 2C:39-5(b). Defendant appeals from the denial of his motion to suppress evidence. We affirm.

The motion judge conducted a hearing on defendant's motion to suppress the gun evidence. Officer Jamar Booker testified for the State. Testifying for the defense were the mother of defendant's children and a woman who claimed to be in the car with defendant at the time of the incident.

According to Booker's testimony, the mother of defendant's children called police to report defendant had a gun and that he pointed the gun at her during an argument. Booker testified the mother of defendant's children told him that one of the children had seen a gun in defendant's hand. When the police arrived at the scene, defendant's car was double-parked. Booker testified defendant was alone in the car when the officers arrived. A fellow police officer approached the driver's side of the car and asked defendant to step out of the vehicle. Officer Booker walked toward the passenger side of the car, shone a flashlight through the open passenger window into the car's interior, and saw a gun in plain view. Booker then reached into the car to secure the gun for the "officer[s'] safety" and found another weapon in the center console under the gun that was in plain view. Defendant was then arrested and searched. During a search of defendant's person, a magazine loaded with live ammunition was discovered.

The mother of defendant's children and a woman who claimed to be in the car testified for the defense at the suppression hearing. The children's mother testified she argued with defendant and called the police. However, she denied she saw a gun, testifying she only heard her daughter say defendant had a gun. The children's mother stated that a woman, a friend of the family, was seated in the front passenger seat of defendant's car. The female passenger testified she was in the front seat of defendant's car and never saw any guns in the car. The female passenger denied seeing or hearing an argument between defendant and the mother of his children.

Officer Booker was recalled to testify in rebuttal during the suppression hearing. Booker stated that if there had been a passenger in defendant's car, the information would have been in his written report, he would have called dispatch to learn if there were any outstanding warrants for the passenger, and, if the passenger was female, he "would have had another female officer come in to search her person."

The judge ruled the vehicle stop was proper due to the motor vehicle violation – double parking – and the domestic violence investigation. The judge also determined the plain view doctrine applied. Under the totality of the circumstances, because the items searched for and seized were guns, based on safety concerns

for the officers, the judge found the officers' actions were reasonable given the guns were within defendant's reach. The judge also gave more weight to Officer Booker's testimony, finding his testimony more credible than the defense witnesses' testimony. The motion judge discounted the testimony of the defendant's witnesses based on their relationship to defendant and the numerous unexplained inconsistencies in their testimony. On appeal, defendant argues:

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE WAS
IMPROPERLY DENIED.

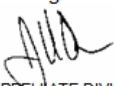
In reviewing a motion to suppress evidence, we defer to the factual and credibility findings of the trial court, "so long as those findings are supported by sufficient credible evidence in the record." State v. Handy, 206 N.J. 39, 44 (2011) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). "[A]n appellate tribunal must defer to the factual findings of the trial court when that court has made its findings based on the testimonial and documentary evidence presented at an evidentiary hearing or trial." State v. Hubbard, 222 N.J. 249, 269 (2015). We accord deference to the trial court "because the 'findings of the trial judge . . . are substantially influenced by his opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J.

154, 166 (2015) (alteration in original) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)).

After reviewing the record, we affirm for the reasons set forth in the judge's well-reasoned oral decision placed on the record on January 8, 2016. The judge's ruling was based upon the credible testimony presented by Officer Booker. Having had the opportunity to see and hear the witnesses, the judge found the testimony of defendant's witnesses to be incredible due to numerous inconsistencies in their testimony that were not explained or reconciled.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION