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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1924-19
A-1926-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EARL HAGGENS,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VANTWUAN D. WILLIAMS,

Defendant-Appellant.

Submitted December 12, 2022 – Decided June 27, 2023

Before Judges Whipple, Mawla, and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 18-12-0899.

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

Joseph E. Krakora, Public Defender, attorney for appellant Vantwuan D. Williams (Gilbert G. Miller, Designated Counsel, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Boris Moczula, Deputy Attorney General, of counsel and on the briefs).

PER CURIAM

Defendants Vantwuan D. Williams and Earl Haggens appeal from the trial court's June 13, 2019 order denying their motion to suppress. After receiving conflicting information and failing to positively identify Williams during a traffic stop, officers brought in a canine and requested consent to search defendant's tractor. The search revealed incriminating evidence and police obtained a search warrant for the trailer component which uncovered hidden drugs. After a hearing, the trial court found Williams' consent was valid, and denied defendants' joint motion to suppress.

On appeal defendants argue the trial court erred in denying their motion to suppress because: the officers did not have a reasonable suspicion to justify the traffic stop; the officers did not have a reasonable and articulable suspicion to request consent; Williams' consent was not knowing and voluntary; the canine

sniff unnecessarily prolonged the stop; and the search exceed the scope of consent. For the reasons that follow, we affirm.

I.

We summarize the facts from the three day suppression hearing conducted by the trial court. Officer Gerard Hardiman was on patrol in Netcong Borough on September 18, 2018, at approximately 7:13 p.m., when he observed a white tractor trailer traveling north on Route 183. He testified a GPS error tended to guide commercial truck drivers down Main Street, in violation of the town's six-ton ordinance.[1] Officer Hardiman noted the defendants' tractor trailer appeared to be in violation of the ordinance. He signaled the driver, Williams, to stop. Officer Hardiman had trouble communicating with Williams because of the noise and requested he pull over into a nearby parking lot.

Officer Hardiman notified police communications about the stop, then walked to the passenger side of the vehicle and asked Williams for his license, registration, and proof of insurance. He observed Williams and a second individual in the vehicle. The officer continued to have difficulty

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[1] Netcong Municipal Ordinance 268-12 states in pertinent part, "[v]ehicles with a gross weight or registered gross weight in excess of six tons are hereby excluded from [certain streets, including Main Street] . . . , except for the pickup and delivery of materials on such streets."

communicating with the vehicle occupants because they were seated approximately three to four feet above him in the truck's cab. After a minute or two, Williams was unable to supply his driver's documents. During this time, Williams went back and forth between the driver's seat and the rear of the cab compartment. The rear of the cab compartment was not in Officer Hardiman's line of sight. The passenger, Haggens, passed over the vehicle registration to the officer.

Officer Hardiman once again asked Williams for identifying documents and called for backup because: Officer Hardiman testified he requested back up for a number of reasons: he was on a busy highway; his view into the large room-size compartment behind the two vehicle seats was obstructed; he was "outnumbered"; and it "felt unusual" to him that a commercial truck driver, like Williams, did not have his driver's license and other documents ready and organized. Williams claimed he could not produce identifying documents because he left them at a truck stop. When asked which truck stop, Williams mumbled several different answers. Officer Hardiman walked back to his car to record Williams' personal information.

At 7:25 p.m., Corporal Jason Janoski arrived on scene, walked over to the truck with Officer Hardiman, and requested Williams exit the vehicle and

provide his identification information. Williams initially stated his name was Jordan A. Victor, and that his birthday was July 12, 1969. Officer Hardiman noticed Williams seemed "very confused" and took long pauses before answering questions. Williams told the officers he had a Colorado driver's license. Officer Hardiman noticed Williams remained confused by his questions, kept glancing at his phone before answering, and was "uneasy."

Officer Hardiman told Williams the information he supplied did not check out. In response, Williams next offered July 12, 1960, as another date of birth. Because the updated information provided by Williams was also incorrect, Officer Hardiman asked Williams his age. He could not understand Williams' answers because he was mumbling and looking down. Officer Hardiman asked Williams what his relationship was to Haggens. Williams answered that Haggens was his uncle. However, when asked what his uncle's name was, Williams answered: "I don't know him like that." Officer Hardiman asked where they started their trip and Williams gave conflicting answers, listing Washington state, then California. He added that he had made stops in Maryland and Pennsylvania.

Corporal Janoski testified about his interactions with Williams. When asked what his social security number was, Williams gave an incomplete

number. Corporal Janoski observed that Williams was fidgeting and restless. When asked about his driver's license, Williams told Corporal Janoski he left his license at a rest stop in Pennsylvania or New Jersey. Corporal Janoski testified that Williams told the officers he and Haggens were on their way to New York but had run out of gas. Williams stated they had gasoline delivered to them and when they called their final destination, they learned it was already closed. Williams stated they re-fueled at a truck rest stop and told Corporal Janoski he left his license there. Corporal Janoski pointed out the inconsistency to Williams and offered to go with him to retrieve his license. Williams then changed his story and stated he left his license at a rest stop in Ohio.

At this point, Corporal Janoski asked Haggens to exit the vehicle. Haggens told Corporal Janoski he had only known Williams for a short time, he had ridden with him a few times, and was not related to him.

After speaking to Haggens, Corporal Janoski then asked Williams about his employment with the trucking company. Williams stated that he was a recent hire, and that when they reached their supposed destination, it had already closed. Corporal Janoski then told Williams that Haggens had informed the officers the two were not related and had known each other only a short time. Williams admitted he had been untruthful with the officers because his

California's driver's license was suspended. At 7:42 p.m. Corporal Janoski confirmed the suspension.

Corporal Janoski next asked Williams whether there was anything illegal within the truck. Williams responded no. Williams then told Corporal Janoski he could search the tractor, but did not give permission to search the trailer, informing Janoski that the officers needed permission from the owner for a trailer search.

Corporal Janoski testified he became concerned for his safety because of Williams' conflicting stories. As a result, Corporal Janoski patted Williams down and once again asked Williams where he was headed. Williams next claimed they were going to a farm "close by," although he could not name or describe the location. The officers then told Williams they believed he was hiding something, and Williams once again stated the officers could search the cab, but not the trailer. Corporal Janoski next told Williams he was not free to leave until they were able to positively identify him and that he was calling for a canine to perform a search. The corporal gave Williams a consent form and told him he had the right to refuse and revoke consent. Williams refused to sign the consent form, but verbally consented to a search of the cab.

Corporal Janoski and Officer Hardiman proceeded to search the inside of the cab and retrieved a small bag of rubber bands, cell phones, and Williams' California driver's license. Officer Hardiman testified that in his experience, the rubber bands looked like the kinds used to package heroin.

At 7:54 p.m., the police confirmed Williams' personal information, ordered a heavy-duty wrecker, and a canine. Corporal Janoski testified he called for the canine because the conflicting stories offered by Williams were "indicators of criminal activity."

The officers testified about their experience with narcotics: Corporal Janoski explained he had performed thousands of motor vehicle stops, approximately 100 of which resulted in the seizure of drugs; and Officer Hardiman had conducted approximately 100 motor vehicle stops with five to ten resulting in the seizure of controlled dangerous substances.

Two Detectives arrived on the scene between 8:20 and 8:30 p.m. with a canine. The canine alerted officers to two duffel bags, one of which Corporal Janoski had already found, and the second found inside a compartment under the lower bunkbed of the cab. The second duffel contained cash wrapped in clear black cellophane, with additional cash bundled together by rubber bands. The cash totaled approximately $103,000. Both defendants denied ownership

of the money. At 9:26 p.m., police administered defendants their Miranda[2] rights and arrested them.

Based on the discovery of the tractor's contents during the search, the officers called the on duty assistant prosecutor to apply for a search warrant to search the trailer.[3] The officers secured the warrant, and the corresponding search of the trailer yielded twenty kilos of fentanyl and heroin.

A grand jury indicted defendants on the following charges: third degree possession of heroin, N.J.S.A. 2C:35-10(a)(l); first-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5(a)(l) and N.J.S.A. 2C:35-5(b)(l); second-degree conspiracy to possess with intent to distribute heroin, N.J.S.A. 2C:5-2; third-degree possession of fentanyl, N.J.S.A. 2C:35- 10(a)(l); second-degree possession with intent to distribute fentanyl, N.J.S.A. 2C:35-5(a)(l) and N.J.S.A. 2C:35-5(b)(4); second-degree conspiracy to possess with intent to distribute fentanyl, N.J.S.A. 2C:5-2; and second-degree financial facilitation of criminal activity, N.J.S.A. 2C:21-25(a). Williams was also charged with third-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(4).

[2] Miranda v. Arizona, 384 U.S. 436 (1966).
[3] Police later learned the tractor was registered to Keith N. Haskins and the trailer was registered to T&N Transportation.

Defendants jointly filed motions to suppress the evidence seized during the motor vehicle stop and the electronic evidence seized pursuant to the warrant.

The court found: Officer Hardiman had a "reasonable and justifiable suspicion to stop the truck;" "the officers were justified in expanding the scope of the traffic stop;" the "totality of the circumstances" justified further inquiry after Williams provided his correct personal information; and Corporal Janoski was "justified in seeking consent" to search from Williams. The court denied both motions.

Williams pled guilty to first degree possession of heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(1); and Haggens pled guilty to first degree possession of heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(1); and second-degree financial facilitation of criminal activity, N.J.S.A. 2C:21-25(a). Each defendant was subsequently sentenced.

Williams argues the following points on appeal:

> POINT I
>
> THE STOP OF [WILLIAMS'] TRACTOR-TRAILER WAS NOT SUPPORTED BY A REASONABLE BASIS, THE POLICE HAD NO BASIS TO REQUEST [WILLIAMS] TO CONSENT TO A SEARCH OF THE TRUCK'S TRACTOR, AND THE SEARCH EXCEEDED THE SCOPE OF [WILLIAMS']

CONSENT, REQUIRING THE SUPPRESSION OF THE CURRENCY WHICH THE POLICE DISCOVERED IN THE TRACTOR AND THE DRUGS SUBSEQUENTLY SEIZED FROM THE TRAILER.

A. THERE WAS NO LEGITIMATE BASIS FOR [OFFICER] HARDIMAN'S STOP OF THE TRACTOR-TRAILER WHICH [WILLIAMS] WAS DRIVING

B. THE POLICE DID NOT HAVE A REASONABLE BASIS TO BELIEVE THAT THE TRACTOR UNIT OF THE TRUCK WHICH [WILLIAMS] DROVE-TRAILER CAB CONTAINED CONTRABAND AS A PREDICATE FOR REQUESTING [WILLIAMS'] CONSENT TO SEARCH THE TRACTOR

C.THE SEARCH EXCEEDED THE SCOPE AUTHORIZED BY [WILLIAMS]

Haggens argues the following points on appeal:

POINT I

THE TRIAL COURT ERRED IN DENYING [HAGGEN'S] MOTION TO SUPPRESS EVIDENCE FOUND IN THE TRACTOR DURING A WARRANTLESS SEARCH. BECAUSE THE SEARCH WARRANT AFFIDAVIT FOR THE TRAILER WAS BASED ON THE EVIDENCE OBTAINED DURING THE WARRANTLESS SEARCH OF THE TRACTOR, THE EVIDENCE SEIZED DURING THAT SEARCH SHOULD ALSO HAVE BEEN SUPPRESSED.

A. OFFICERS DID NOT HAVE REASONABLE AND ARTICULABLE SUSPICION INDEPENDENT OF THE STOP TO REQUEST [WILLIAMS'] CONSENT TO SEARCH THE TRACTOR TRAILER

B. EVEN IF REASONABLE AND ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY EXISTED TO SUPPORT THE REQUEST FOR CONSENT TO SEARCH THE VEHICLE, [WILLIAMS'] CONSENT WAS NOT KNOWINGLY AND VOLUNTARILY PROVIDED

C. THE CANINE SNIFF UNLAWFULLY PROLONGED THE TIME NEEDED TO COMPLETE THE MAIN PURPOSE OF THE STOP WITHOUT THE REQUISITE REASONABLE SUSPICION INDEPENDENT FROM THE STOP ITSELF

D. THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT DID NOT JUSTIFY THE SEARCH OF THE TRACTOR

E. THE EXCLUSIONARY RULE REQUIRED SUPPRESSION OF THE EVIDENCE FOUND IN THE TRAILER DURING THE SEARCH CONDUCTED PURSUANT TO A SEARCH WARRANT

II.

The scope of review on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021). "Generally, . . . a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). This is because of the trial court's "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)). Therefore, we "will not disturb the trial court's factual findings unless they are so clearly mistaken that the interests of justice demand intervention and correction." State v. Goldsmith, 251 N.J. 384, 398 (2022) (internal quotations omitted) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). However, legal conclusions drawn from those facts are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022).

III.

A.

Williams argues Officer Hardiman did not have a reasonable suspicion that the truck was in violation of the municipal ordinance. The Supreme Court

has held police may stop a vehicle only if they have a reasonable and articulable suspicion that a motor vehicle offense has been committed. Delaware v. Prouse, 440 U.S. 648, 663 (1979). In State v. Bacome, our Supreme Court reaffirmed that "[t]o be lawful, an automobile stop 'must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.'" 228 N.J. 94, 103 (2017) (quoting State v. Carty, 170 N.J. 632, 639-40 (2002)). Importantly, the State bears the burden at a motion to suppress to prove that a motor vehicle stop is supported by a reasonable and articulable suspicion. State v. Atwood, 232 N.J. 433, 444 (2018) (citing State v. Maryland, 167 N.J. 471, 489 (2001)).

Our Supreme Court has stressed that "raw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop." State v. Scriven, 226 N.J. 20, 34 (2016). Rather, the reasonable suspicion standard requires "some minimal level of objective justification for making the stop." State v. Nishina, 175 N.J. 502, 511 (2003) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)).

Furthermore, the reasonable suspicion analysis accounts for "the officers' background and training, and permits them 'to draw on their own experience and specialized training to make inferences from and deductions about the

cumulative information available to them that might well elude an untrained person.'" State v. Nelson, 237 N.J. 540, 555 (2019) (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)).

Here, the municipal ordinance prohibits trucks over six tons from driving on Main Street unless they are engaged in pick up or delivery. See Netcong Municipal Ordinance 268-12. Officer Hardiman testified he often observed tractor trailers mistakenly drive down Main Street, likely due to a GPS error, in violation of the municipal ordinance. He also testified he had previously stopped approximately twenty-five to thirty commercial vehicles for this infraction. Officer Hardiman testified he believed defendants made the same error, as other commercial vehicles have done in the past. The record supports the trial court's finding of reasonable suspicion.

B.

Williams next argues the officers did not have a reasonable and articulable suspicion to believe the cab contained contraband as a predicate to seek consent to search the tractor, and his consent was not "validly and effectively given." We are not persuaded.

Police must have a reasonable and articulable suspicion that a search will produce evidence of criminal activity before requesting a driver's consent to a

search following a routine traffic stop. Carty, 170 N.J. at 645-46; see State v. Thomas, 392 N.J. Super. 169, 188-89 (App. Div. 2007) (holding that the police did have a reasonable and articulable suspicion to seek consent to search a vehicle whose occupants appeared nervous, failed to provide identification, and offered conflicting stories).

The determination must be based on an objective evaluation of the circumstances in light of the officer's experience and knowledge, as well as the facts available at the time of the encounter. See State v. Alessi, 240 N.J. 501, 518, 521-23 (2020); State v. Chisum, 236 N.J. 530, 545-46 (2019); State v. Pineiro, 181 N.J. 13, 20-21 (2004); State v. Stovall, 170 N.J. 346, 361 (2002).

Here, the record shows there was sufficient reasonable and articulable suspicion to justify the request to Williams to give consent to search the tractor. Williams repeatedly failed to give the officers accurate identifying information; he gave conflicting stories about the origin of his trip and the final destination; he lied about his relationship with Haggens; and the officers testified he was fidgety, restless, averting his gaze, and mumbling his answers. In addition, the officers testified that in their experience, commercial drivers normally kept their driver's license and related information on hand, so it was strange Williams did not.

We next consider whether the court erred in finding Williams knowingly and voluntarily consented to a search under the Fourth Amendment. Haggens, citing the factors in State v. King, 44 N.J. 346, 352-53 (1965), contends Williams' consent was invalid. We disagree.

Individuals are protected from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. U.S. Const. amend. IV; N.J. Const., art. I, ¶7. While "[w]arrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions[,]" there are a "few well-delineated exceptions to the warrant requirement[,]" including validly obtained consent to search. Pineiro, 181 N.J. at 19 (first citing State v. Patino, 83 N.J. 1, 7 (1980); and then quoting Maryland, 167 N.J. at 482). "Implicit in the very nature of the term 'consent' is the requirement of voluntariness." King, 44 N.J. at 352. Accordingly, "consent must be 'unequivocal and specific' and 'freely and intelligently given.'" Ibid. (quoting Judd v. United States, 190 F.2d 649, 651 (D.C. Cir. 1951)).

In Carty, the court noted that "the Johnson standard has not been effective in protecting our citizens' interest against unreasonable intrusions when it comes to suspicionless consent searches following valid motor vehicle stops." 170 N.J. at 646. The Carty court explained that "consent searches following valid motor vehicle stops are either not voluntary because people feel compelled to consent for various reasons or are not reasonable because of the detention associated with obtaining and executing the consent search." Ibid. Accordingly, it "expand[ed] the Johnson . . . standard and [held] that unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop to continue the detention after completion of the valid traffic stop, any further detention to effectuate a consent search is unconstitutional." Id. at 647.

In King, our Supreme Court set forth the following factors in determining whether an individual's consent to search was coerced:

> (1) that consent was made by an individual already arrested; (2) that consent was obtained despite a denial of guilt; (3) that consent was obtained only after the accused had refused initial requests for consent to search; (4) that consent was given where the subsequent search resulted in a seizure of contraband which the accused must have known would be discovered; [and] (5) that consent was given while the defendant was handcuffed.
>
> [King, 44 N.J. at 352-53 (citations omitted).]

We find the consent obtained from Williams was proper. Applying the King factors here: (1) consent was not obtained while Williams was arrested; (2) Williams stated there was no evidence of illegal activity within the truck; (3) consent was not obtained after an initial refusal, in fact Williams repeatedly told officers they were allowed to search the tractor but not the trailer without the owner's permission before the officers even requested consent; (4) Williams likely knew the search would result in the discovery of the black duffel bag hidden in the compartment and numerous drugs in the trailer; (5) Williams was not handcuffed at the time he consented. Based on the application of the King factors and the totality of the circumstances, Williams' consent was knowing and voluntary.

Next, Williams argues even if the officers had a valid basis to request consent to search, their search exceeded the authorized scope. Williams contends the tractor consisted of two separate units, the front where the seats were, and the back where the sleeping compartment was. Williams maintains he consented to the search of the front of the tractor, but not the sleeping compartment.

"[W]hen police rely on a consent to search, the search that may be conducted pursuant thereto is limited by the scope, whether express or implied,

of the consent." State v. Younger, 305 N.J. Super. 250, 256 (App. Div. 1997). "The scope of a search extends to what is objectively reasonable, which is defined as what 'the typical reasonable person [would] have understood' the scope to include." State v. Hampton, 333 N.J. Super. 19, 29 (App. Div. 2000) (alteration in original) (quoting Florida v. Jimeno, 500 U.S. 248, 251 (1991)).

Williams was unequivocal regarding the scope of the search. He told officers they were allowed to search the cab, but did not have permission to search the trailer. At no point during the search did he voice a concern when he saw the officer's walking into the sleeping compartment or when the canine was brought onto the truck, although Corporal Janoski advised him he had the "right . . . even after giving consent [to] revoke that consent at any time during the search." Williams' statement officers could only search the cab only demonstrates his understanding of the seriousness and nature of the search. If he wanted to limit the search to the sleeping compartment, he had three opportunities: first, when he consented to the search and placed the trailer off-limits; second, when the officer asked that he sign the consent form; and third, when the officers physically conducted the search.

C.

Haggens argues the officers unnecessarily prolonged the stop because they did not have the requisite reasonable and articulate suspicion for a canine sniff. He contends a canine sniff was unnecessary because Williams ultimately provided the officers with his identifying information.

During a lawful traffic stop, a police officer can "inquire 'into matters unrelated to the justification for the traffic stop[,]'" State v. Dunbar, 229 N.J. 521, 533 (2017) (quoting Arizona v. Johnson, 555 U.S. 323, 333 (2009)), and "may make 'ordinary inquiries incident to [the traffic] stop,'" ibid. (alteration in original) (quoting Rodriguez v. United States, 575 U.S. 348, 355 (2015)). "If, during the course of the stop or as a result of the reasonable inquiries initiated by the officer, the circumstances 'give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" State v. Dickey, 152 N.J. 468, 479-80 (1998) (alteration in original) (quoting United States v. Johnson, 58 F.3d 356, 357-58 (8th Cir. 1995)).

"[A] canine sniff is sui generis and does not transform an otherwise lawful seizure into a search that triggers constitutional protections." Nelson, 237 N.J. at 553 (alteration in original) (quoting Dunbar, 229 N.J. at 538). Therefore, "an officer does not need reasonable suspicion independent from the justification for a traffic stop . . . to conduct a canine sniff." Ibid. (quoting Dunbar, 229 N.J. at

540). "However, 'an officer may not conduct a canine sniff in a manner that prolongs a traffic stop beyond the time required to complete the stop's mission, unless he possesses reasonable and articulable suspicion to do so.'" Ibid.

Here, the officers called for the canine unit at 7:54 p.m. The unit arrived approximately 8:30 p.m. The officers testified they believed there were several "indicators of criminal activity." They included: defendants' conflicting stories about their relationship; Williams' conflicting statements regarding their trip; Williams' lies to officers about his identity; and Williams' nervous and "uneasy" demeanor. In addition, after the consent search, the officers retrieved a small bag of rubber bands, which in their experience, looked like the kinds used to package heroin. The record contains ample evidence to find reasonable and articulable suspicion sufficient to prolong the stop long enough for the canine unit to arrive. Because the officers conducted a valid consent search, we do not reach the remainder of defendants' arguments. To the extent we have not addressed any remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION