

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1546

KA 07-02343

PRESENT: SCUDDER, P.J., SMITH, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

AARON J. DEMPSEY, DEFENDANT-APPELLANT.

KRISTIN F. SPLAIN, CONFLICT DEFENDER, ROCHESTER (KIMBERLY J. CZAPRANSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Alex R. Renzi, J.), rendered September 19, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, illegal signal from parked position and no head lamps.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of, *inter alia*, criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that County Court erred in refusing to suppress the weapon that the police seized from his person. According great deference to the court's determination (*see generally People v Prochilo*, 41 NY2d 759, 761), we reject that contention. It is well settled that the police may lawfully stop a vehicle where, as here, they have "probable cause to believe that the driver of [the vehicle] has committed a traffic violation" (*People v Robinson*, 97 NY2d 341, 349). Contrary to defendant's contention, "[i]n making [a] determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant" (*Robinson*, 97 NY2d at 349). Furthermore, "out of a concern for safety, 'officers may . . . exercise their discretion to require a driver who commits a traffic violation [as well as the passengers in the vehicle] to exit the vehicle even though they lack any particularized reason for believing the driver [or a passenger] possesses a weapon' " (*People v Robinson*, 74 NY2d 773, 774, *cert denied* 493 US 966, quoting *New York v Class*, 475 US 106, 115). Here, a handgun was recovered from a passenger in the vehicle and, "[t]hus, the police had the requisite reasonable suspicion to believe that at least one of the occupants of the vehicle

was armed prior to conducting the pat-down search[]" of defendant
(*People v Edwards*, 52 AD3d 1266, 1267, lv denied 11 NY3d 736).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court