

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

997

KA 13-02158

PRESENT: CENTRA, J.P., CARNI, LINDLEY, CURRAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES KNIGHTON, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered September 23, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal possession of marihuana in the third degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of marihuana in the third degree (Penal Law § 221.20) and, in appeal No. 2, defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the third degree (§ 220.16 [1]). The pleas were entered during one plea proceeding, following the decision of County Court to deny suppression concerning all of the charges after a hearing. We reject defendant's contention that the testimony of the police officers at the suppression hearing was tailored to nullify constitutional objections and was incredible as a matter of law (*see People v Holley*, 126 AD3d 1468, 1469, *lv denied* 27 NY3d 965; *People v James*, 19 AD3d 617, 618, *lv denied* 5 NY3d 829). "Questions of credibility are primarily for the suppression court to determine and its findings will be upheld unless clearly erroneous" (*People v Squier*, 197 AD2d 895, 895, *lv denied* 82 NY2d 904; *see generally People v Prochilo*, 41 NY2d 759, 761). "Nothing about the officer[s'] testimony was unbelievable as a matter of law, manifestly untrue, physically impossible, contrary to experience, or self-contradictory" (*James*, 19 AD3d at 618). We therefore discern no basis in the record for disturbing the court's finding that probable cause existed for the traffic stops (*see People v Williams*, 132 AD3d 1155, 1155-1156, *lv denied* 27 NY3d 1157; *People v Hale*, 130 AD3d 1540, 1540, *lv denied* 26 NY3d 1088, *reconsideration*

denied 27 NY3d 998; People v Mack, 114 AD3d 1282, 1282, lv denied 22 NY3d 1200).

Entered: November 10, 2016

Frances E. Cafarell
Clerk of the Court