

**NOT FOR PUBLICATION WITHOUT THE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-3994-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAWRENCE CARTER, JR.,

Defendant-Appellant.

Submitted April 25, 2017 – Decided August 11, 2017
Remanded by Supreme Court May 29, 2018.
Resubmitted July 2, 2018 – Decided September 6, 2018

Before Judges Koblitz and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
13-10-3174.

Joseph E. Krakora, Public Defender, attorney
for appellant (Margaret McLane, Assistant
Deputy Public Defender, of counsel and on the
briefs).

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Maura Murphy
Sullivan, Assistant Prosecutor, of counsel and
on the briefs).

PER CURIAM

In an earlier opinion, we affirmed defendant Lawrence Carter Jr.'s conviction and sentence for having committed various weapons offenses. See State v. Carter, No. A-3994-14 (App. Div. Aug. 11, 2017) (slip op. at 22). We summarized the facts leading to defendant's arrest and conviction by stating that after the police stopped defendant for motor vehicle violations, "he failed to produce his vehicle registration, [an] officer searched the vehicle's glove compartment for defendant's registration card and discovered a handgun. A subsequent search of the vehicle pursuant to a warrant revealed additional weapons." Id. at 2. In affirming defendant's conviction, we quoted from our opinion in State v. Hamlett, 449 N.J. Super. 159, 173 (App. Div. 2017), where we quoted from State v. Keaton, 222 N.J. 438, 450 (2015), and held "'after [a] driver has been provided the opportunity to produce his credentials and is either unable or unwilling to do so,' a limited warrantless search of a glove compartment for vehicle ownership documents may be conducted by a police officer." Id. at 9.

After we issued our opinion, defendant filed a petition for certification that the Supreme Court granted. State v. Carter, 233 N.J. 297, 297 (2018). The Court remanded to us "the issue of the warrantless search for driving credentials . . . for reconsideration in light of th[e] Court's opinion in" State v.

Terry, 232 N.J. 218, 223 (2018). State v. Carter, 233 N.J. 399, 399 (2018).

In Terry, the Court "reaffirm[ed its] decision in Keaton -- and in previous cases -- that, when a driver is unwilling or unable to present proof of a vehicle's ownership, a police officer may conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle." Terry, 232 N.J. at 223. However, it added a new "limiting principle" stating that "a warrantless search for proof of ownership will not be justified" "[w]hen a police officer can readily determine that the driver or passenger is the lawful possessor of the vehicle -- despite an inability to produce the registration" Ibid.

The police officers in Terry stopped a truck after it went through a stop sign, ignored the officers' signal to pull over and fled the police at a high rate of speed. Id. at 222-23. During the ensuing chase, the police were able to ascertain that the vehicle was rented from an airport agency and had not been reported stolen. Id. at 225. Once the vehicle was stopped and the driver removed, he produced his driver's license but refused to respond to the officers' request for the registration and insurance identification card or to even verbally advise whether he was the owner of the vehicle. Ibid. "At [that] point, [an officer . . . went to the passenger's side of the truck, opened the door, and

using his flashlight looked in the glove box -- '[t]he most common place' where ownership and insurance papers are stored." Id. at 225-26 (fourth alteration in original). The search did not reveal any vehicle documents, but did result in the discovery of a handgun. Id. at 226. During an ensuing search of the driver, the vehicle's rental documents were found in his jacket's pocket. Ibid.

After a thorough analysis of the Court's earlier treatment of the "limited registration exception" to the Fourth Amendment requirement that searches be conducted pursuant to valid warrants, the Court reaffirmed the validity of the exception and stated:

The authority to conduct a warrantless registration search is premised on a driver's lesser expectation of privacy in his vehicle and on the need to ensure highway and public safety. A motorist must be given a meaningful opportunity to produce ownership credentials, but if he is either unable or unwilling to do so, an officer may conduct a brief and targeted search of the area where the registration might normally be kept in the vehicle.

[Id. at 238-39 (citing Keaton, 222 N.J. at 448).]

The Court determined that the exception continued to "rest[] upon solid constitutional ground[,]" id. at 242, but held that it did not apply where "a driver or passenger explains to an officer that he has lost or forgotten his registration, and the officer can

readily determine that either is the lawful possessor. Modern technology may increasingly allow police officers to make such timely determinations." Id. at 243.

Turning to the facts before it, the Court stated that in determining whether defendant was unwilling or unable to produce his vehicle's documents, "[t]he test is not what thoughts were in defendant's mind. Rather, the test is whether the officers acted in an objectively reasonable manner in light of the tense and perilous situation confronting them." Id. at 245 (citing State v. Watts, 223 N.J. 503, 514 (2015)). It concluded that "[f]rom the objectively reasonable viewpoint of the officers, defendant was unwilling or unable to produce proof of ownership. . . . [and the officer . . . had the right to conduct a limited, pinpointed search for the rental papers in the places where they are ordinarily kept" based upon "the totality of defendant's behavior [that] raised a reasonable suspicion that the truck might be a stolen vehicle." Id. at 246.

As we explained in our description of the events that took place in this case after defendant was stopped, "the officer ran the vehicle's license plate and discovered the car was registered to defendant and not reported stolen." Carter, slip op at 4. When the officer requested "his license, registration, and insurance[, d]efendant initially stated he did not have a license, but

eventually produced a New Jersey driver's license after being asked multiple times. Although provided with the opportunity to do so, defendant never produced a registration or other proof of ownership or insurance." Ibid.

During the officer's observations of defendant and his passengers and considering their answers to his questions, he became concerned about his safety and "believe[d] defendant may attempt to flee" Ibid. The occupants of the vehicle were removed and pat-downs did not reveal any weapons. Id. at 5. After the officer "returned to his vehicle to search for outstanding warrants[, he] discovered that [defendant and his male passenger] had criminal records and that [the passenger] had outstanding warrants for his arrest." Ibid. The officer also asked another officer "to search defendant's vehicle for a registration card or other proof of ownership since none had been provided." Ibid. The ensuing search of "the center console and then the glove compartment, [revealed] a loaded handgun." Ibid. "The police later obtained a warrant to search the rest of the vehicle and that search revealed additional weapons and other contraband." Id. at 6.

The trial court subsequently denied defendant's motion to suppress the evidence seized from his vehicle and we affirmed. See id. at 6-7, 11.

After the Court issued its order remanding the matter for our consideration of Terry's applicability to this case, we asked the parties to submit additional briefs addressing the issue. In his brief, defendant argued that the additional limitation imposed by the Court in Terry made the search of defendant's car unconstitutional because defendant had turned over his license and the officer had determined that defendant owned the vehicle and it was registered to him. In response, the State argues that "[n]otwithstanding the surface correlation between defendant's license and the registered owner, without the registration, the officer's investigation into this motor vehicle stop would not have been complete, such that the limiting principle announced in Terry is inapplicable and does not invalidate the credential search in this case." According to the State, the suspicious behavior demonstrated by defendant and his passengers created a reasonable suspicion that defendant was not in lawful possession of the vehicle, justifying the search of the console and glove compartment. We find no merit to the State's contentions.

We conclude Terry's application to the facts in this case compels us to reconsider our earlier determination and reverse the trial court's denial of defendant's suppression motion. As we noted, the officer inspected the vehicle's console and glove box to find "a registration card or other proof of ownership since

none had been provided" and for no other reason. Carter, slip op. at 5. However, as Terry explains, there was no reason to conduct a warrantless search for those documents once the police had determined that the car was registered to defendant and he produced his license confirming his identity. 232 N.J. at 223. Under these circumstances, Terry applied and the search of the vehicle was an improper warrantless search of defendant's vehicle. Because the ensuing warrant to search the rest of the vehicle was based upon the discovery of a weapon in the glove box, the evidence arising from that warrant must also be suppressed. See State v. Dispoto, 189 N.J. 108, 123 (2007) (holding that the evidence obtained through an invalid search warrant constitutes fruits of the poisonous tree and must be suppressed).

The order denying suppression is reversed, defendant's conviction is vacated and the matter is remanded.

Reversed and remanded for such further proceedings consistent with our opinion. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION