



**New Jersey Judiciary
Superior Court - Appellate Division
NOTICE OF MOTION**

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STATE OF NEW JERSEY
V
PAUL J. CANEIRO

Notice of Motion:

MOTION FOR LEAVE TO APPEAL
AN INTERLOCUTORY ORDER GRANTING SUPPRESSION

PLEASE TAKE NOTICE that the undersigned hereby moves before the Superior Court of New Jersey, Appellate Division, for an Order granting the above relief:

In support of this motion, I shall rely on the accompanying brief or certification.

I hereby certify that I am submitting the original of this notice of motion and accompanying brief or certification to the Clerk of the Appellate Division, and submitting same upon my adversary by email notification. If delivery by non-electronic means, two copies of same will be served upon the following:

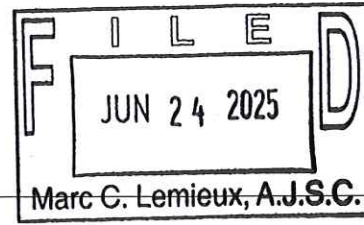
TO:

**MONIKA THERESA
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Trial court #: 19-02-00283-I
Trial court disposition date: 06/24/2025
Category: INDICTMENT
Type: CRIMINAL
County: MONMOUTH

Trial Court Judge name: MARC C. LEMIEUX

For: APPELLANT,
STATE OF NEW JERSEY
s/ MONICA LUCINDA DO OUTEIRO, Esq.
MONMOUTH COUNTY PROSECUTORS OFFICE
BAR ID#: 041202006 Date: 07/14/2025
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PREPARED BY THE COURT

STATE OF NEW JERSEY

Plaintiff,

v.

PAUL CANEIRO

Defendant.

SUPERIOR COURT OF NEW
JERSEY

LAW DIVISION: CRIMINAL PART
MONMOUTH

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Case No.: 18-4915

ORDER

THIS MATTER having been opened to the court on application of defendant Paul Caneiro (Monika Mastellone, appearing), and opposed by Raymond Santiago, Monmouth County Prosecutor (Christopher Decker and Nicole Wallace, Assistant Prosecutors, appearing), and the court having heard arguments of counsel and for good cause shown;

IT IS on this 24TH day of JUNE, 2024;

ORDERED that Defendant's motion to suppress the contents of the DVR, serial number QT4281105092619, is **GRANTED**

A handwritten signature in blue ink, appearing to read "Marc C. Lemieux".

HON. MARC C. LEMIEUX, A.J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH

Ind. No. 19-02-283

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Decided: June 24, 2025

STATE OF NEW JERSEY,

v.

PAUL CANEIRO

Defendant.

FINDINGS AND CONCLUSIONS OF THE COURT ON
DEFENDANT'S MOTION TO SUPPRESS WITHOUT A
WARRANT

CHRISTOPHER DECKER, ESQ. and NICOLE WALLACE, ESQ.,
for the State of New Jersey Monmouth County Prosecutor's Office

MONIKA MASTELLONE., for Defendant, PAUL CANEIRO

MARC C. LEMIEUX, A.J.S.C.

I. INTRODUCTION

a. Relevant Procedural and Factual History

On November 20, 2018, at approximately 5:00 a.m., a fire was reported at 27 Tilton Drive in Ocean Township, New Jersey, the residence of Paul Caneiro (hereinafter, "Defendant") and his family. Emergency responders, including officers

from the Ocean Township Police Department and firefighters from the Oakhurst, Wanamassa, and Neptune Fire Departments, arrived on scene within minutes.

Upon arrival, first responders observed Defendant and his family outside the home. Defendant had moved one of the family vehicles, a Porsche Cayenne, into the street to clear the driveway and had assisted his wife and daughters to safety. Responders observed an active fire traveling up the southeast corner of the residence from the basement into the attic. In addition, a smaller, separate fire was observed near the north wall of the residence, just inside the door of a garage located on the opposite side of the home.

First Responders extinguished the garage fire shortly after arrival, while suppression efforts continued on the main structure.

During firefighting and initial scene assessment, officers and fire officials identified several items they believed to be relevant to the cause of the fire. Near the garage door where the smaller fire had occurred, police observed a two-gallon red gasoline can with a melted spout, a charred rubber glove, and soot deposits on the hood of a vehicle parked in the driveway. Defendant informed officers that gasoline cans were normally stored in a detached shed on the property. Upon inspecting the shed, Officer Kevin Redmond and Sergeant Jeffrey Malone observed an open space in a line of gasoline cans that could accommodate the missing container, along with wet boot prints on decorative stones leading to and from the shed. These

observations contributed to investigators' growing suspicion that the fire had been intentionally set.

At approximately 5:37 a.m., Officer David Marino entered the garage to locate the DVR system identified as a On-See 8-channel H 264 DVR model QT428 serial number QT4281105092619. By that time, the smaller fire near the garage had been extinguished for approximately thirty minutes, and officers had established a perimeter around the area, marking it as part of the scene under investigation. Using a flashlight, Officer Marino began visually searching the garage interior. Soon thereafter, he was joined by Sergeant Malone and additional officers. Based on information provided by Defendant's daughter regarding the DVR's location, officers retrieved a ladder from the garage, positioned it next to a tall refrigerator, and climbed to access the equipment. Officers then disconnected multiple cables and removed the DVR unit along with related components. The DVR remained in police custody from the time of its seizure through the subsequent consent search. Officer Marino secured the equipment in his patrol vehicle while fire suppression and investigative activity continued elsewhere on the property.

At approximately 11:37 a.m., Detective Captain Brian Weisbrot of the Monmouth County Prosecutor's Office and Detective Christopher Brady of the Ocean Township Police Department met with Defendant near the scene. During their conversation, the detectives asked Defendant about the DVR system and whether he

would consent to a search of its contents. Defendant again mentioned that the DVR had experienced recent Wi-Fi connectivity issues and that he was unsure whether the system had been recording at the time of the fire. Defendant agreed to the request and executed a written "Consent to Search" form. The form, signed by Defendant and witnessed by the detectives, included advisements concerning his right to refuse consent and his right to revoke consent at any time. At this time, the Defendant and his family remained present at the scene and the Defendant was not under arrest.

Following further investigation, Defendant was indicted in February 2019 under Monmouth County Indictment No. 19-02-0283 on charges including multiple counts of murder, aggravated arson, weapons offenses, theft, and hindering apprehension.

On May 7, 2025, Defendant filed a motion to suppress the DVR system and its contents, asserting that the warrantless seizure violated both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. Pursuant to its burden to justify the warrantless seizure, the State filed opposition on May 27, 2025, contending that exigent circumstances excused the need for a warrant. Defendant filed a reply brief on June 2, 2025.

This Court conducted an evidentiary hearing on June 3, 2025. During the hearing, the Court heard testimony from multiple witnesses, including Sergeant

Jeffrey Malone, Officer David Marino, and other responding officers. Body-worn camera footage and additional exhibits were admitted into evidence.

The Court has carefully considered the testimony presented, the video and photographic evidence, and the parties' written submissions in rendering its findings of fact and conclusions of law.

b. The State's Position

The State contends that the warrantless seizure of the DVR was justified under the exigent circumstances exception to the warrant requirement.

The State acknowledges that the garage fire had been extinguished by the time the DVR was seized, but argues that fires are inherently volatile and unpredictable, and that the ongoing suppression activity elsewhere in the home, combined with the instability of the overall structure, created a continued risk that the DVR could be damaged or destroyed if action were delayed.

The State further contends that the exigency associated with firefighting operations does not end with the extinguishment of visible flames, and that under Michigan v. Tyler, 436 U.S. 499 (1978), and subsequent cases, officials may lawfully continue to investigate the cause of a fire and preserve relevant evidence without first obtaining a warrant. The State argues that such post-fire cause investigation is a recognized category of exigent circumstance in itself, particularly

where there is a public safety interest in determining whether the fire was accidental or criminal in nature.

In support of this position, the State relies on Tyler, as well as on language in Caniglia v. Strom, 593 U.S. 194 (2021), and recent New Jersey cases such as State v. Miranda, 253 N.J. 461 (2023), and State v. Manning, 240 N.J. 308 (2020), which recognize that in certain emergency contexts, including firefighting and public safety incidents, the need for prompt action may outweigh the delay required to obtain a warrant. The State asserts that where probable cause to believe a crime has occurred arises during such an investigation, as it did here, when officers observed indicators of possible arson, police are not required to halt their investigative activity or forego securing key evidence while awaiting a warrant.

The State further emphasizes that the DVR was known to contain potentially critical evidence relating to the cause and origin of the fire, including possible footage of exterior areas of the property, the garage, and the shed, which could have captured the actions of an arsonist. The State contends that it was necessary to secure the DVR promptly to prevent the risk of its loss due to further structural damage, water infiltration, or other consequences of the fire scene. The State also argues that the DVR was removed within a matter of minutes and that the time required to obtain a warrant would have posed an unacceptable risk of losing valuable evidence. Finally, the State maintains that the officers acted appropriately in securing the DVR.

in the midst of an unfolding fire scene investigation, and that the subsequent consent obtained from Defendant independently rendered the later search of the DVR lawful.

c. The Defendant's Position

Defendant contends that the officers lacked an objectively reasonable basis to believe that prompt action was necessary to prevent destruction or loss of the DVR evidence. Defendant argues that the smaller fire near the garage had been extinguished for over thirty minutes at the time of the seizure, that the garage was structurally intact and undamaged, and that officers had established a secured crime scene perimeter around the garage with tape. Defendant further maintains that the DVR was not exposed to any ongoing hazard and that the conditions at the time did not justify an immediate, warrantless seizure.

Defendant also contends that the seizure of the DVR cannot be justified under the "plain view" doctrine. Defendant argues that the DVR was not in plain view, but was located through questioning of Defendant's family members and a deliberate search by officers inside the garage. According to Defendant, the DVR was positioned atop a tall refrigerator, required use of a ladder and flashlight to locate and retrieve, and involved officers disconnecting various cables and equipment. Defendant asserts that under Michigan v. Tyler, 436 U.S. 499 (1978), Michigan v. Clifford, 464 U.S. 287 (1984), and related New Jersey cases, warrantless seizure of

evidence during post-fire investigations is permissible only where such evidence is in plain view during the course of lawful emergency activities.

In addition, Defendant maintains that the officers were no longer engaged in emergency firefighting or life safety operations at the time of entry into the garage.

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Defendant contends that by that point, the fire was suspected to be arson, the scene had transitioned into a criminal investigation, and officers had ample opportunity to seek a criminal search warrant for the DVR. Defendant argues that the officers' deliberate entry and search of the garage for evidence constituted investigatory conduct that required adherence to the warrant requirement, particularly given that the cause of the fire had already been identified as suspicious.

Defendant further asserts that even if some exigency had existed earlier in the incident, it had dissipated by the time of the DVR seizure, and that the DVR remained safely secured in an officer's patrol vehicle for several hours before any search was conducted. Defendant argues that the later consent obtained from Defendant does not cure the prior unconstitutional seizure, and that the taint of the unlawful warrantless search requires suppression of both the DVR and any evidence derived from it. Finally, Defendant emphasizes that under both the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution, heightened protections apply to the home, and that warrantless entries and seizures in residential settings must be subjected to particularly careful scrutiny.

II. FINDINGS OF THE COURT AS TO OFFICER CONDUCT

On June 3, 2025, this Court heard testimony regarding Defendant's motion to suppress the DVR evidence. The Court heard testimony from Sergeant Jeffrey Malone, Officer David Marino, and other responding officers who were present at the fire at 27 Tilton Drive. During the hearing, both parties moved exhibits into evidence, including body-worn camera footage, photographs, reports, and other materials, all of which the Court has reviewed and considered.

The Court finds that the testimony of Sergeant Malone and Officer Marino was credible, forthright, and consistent with the record. There is no evidence to suggest that either officer was untruthful or that their testimony was offered in bad faith. The officers' actions appeared to be well-intentioned and focused on the developing fire investigation. However, under the governing legal standard, the Court must assess whether the conduct of the officers reflected the actions of objectively reasonable law enforcement officers acting under similar circumstances.

Having carefully considered the testimony, the exhibits, and the totality of the record, the Court finds that the deliberate approach taken to locate, retrieve, and seize the DVR, following the extinguishment of the garage fire and the establishment of scene control, was inconsistent with what an objectively reasonable officer would have done under the same circumstances. While the officers were pursuing legitimate investigative objectives, the sequence of events, manner of entry, and lack

of demonstrated exigency at the time of the seizure do not satisfy the standard required to excuse the warrant requirement under settled law.

III. GOVERNING LAW AND LEGAL ANALYSIS

Both the Federal and the New Jersey Constitution guarantees the “right of the people to be secure...against unreasonable searches and seizures.” U.S. Const. amend. IV; N.J. Const., Art. I, Para. 7. “Because warrantless [searches and seizures] are presumptively invalid, the State bears the burden of establishing that any such stop or search is justified by one of the one-well delineated exceptions to the warrant requirement.” State v. Shaw, 213 N.J. 398, 409 (2012) (internal quotations omitted). The State must prove the validity of a warrantless search or seizure by a preponderance of evidence. See ibid.

Like the review of a search warrant, which is confined to the four corners of the supporting affidavit, the validity of a warrantless search is evaluated on the basis of testimony and evidence presented at the suppression hearing. State v. Wilson, 178 N.J. 7, 14 (2003).

In this case, the State contends that the seizure of the DVR was justified under the exigent circumstances exception to the warrant requirement.

a. Exigent Circumstances

Exigent circumstances may excuse the need for the police to obtain a warrant. See e.g., State v. DeLuca, 168 N.J. 626, 632 (2001); State v. Lewis, 116 N.J. 477, 483 (1989) (citing Vale v. Louisiana, 399 U.S. 30, 34 (1970)).

Generally stated, circumstances are exigent when they “preclude expenditure of the time necessary to obtain a warrant because of a probability that the suspect or the object of the search will disappear, or both.” DeLuca, 168 N.J. at 632 (quoting State v. Smith, 129 N.J. Super. 430, 433 (App. Div. 1974)). Thus, “when the State invokes the exigent-circumstances exception to justify a warrantless search, it must prove by a preponderance of the evidence that (1) the search was premised on probable cause and (2) law enforcement acted in an objectively reasonable manner to meet an exigency that did not permit time to secure a warrant.” State v. Manning, 240 N.J. 308, 333 (2020) (citing In re J.A., 233 N.J. 432, 448 (2018)).

Exigent circumstances, by their nature, are inexact and wholly dependent on the facts presented. See id. at 632. Accordingly, courts must undertake an objective assessment of the totality of the circumstances to determine whether the exception applies. See id. In conducting this analysis, courts may consider the following factors:

- (1) the seriousness of the crime under investigation,
- (2) the urgency of the situation faced by the officers,
- (3) the time it would have taken to secure a warrant,
- (4) the threat that evidence would be destroyed or lost or people would be endangered unless immediate action was taken,

- (5) information that the suspect was armed and posed an imminent danger, and
- (6) the strength or weakness of the probable cause relating to the item to be searched or seized.

[Manning, 240 N.J. at 333–34.]

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investigation¹ or that the officers possessed sufficient probable cause² to seize the DVR. Rather, the central dispute concerns the urgency of the situation faced by officers at the time of the seizure, the time it would have taken to secure a warrant, and the risk that evidence would be destroyed or lost absent immediate action.³

i. The Urgency of the Situation Faced by the Officers

Because “emergent circumstances” are fact-specific, examples of urgency vary in nature. See, e.g., State v. Scott, 231 N.J. Super. 258, 275 (App. Div. 1989)

¹ Even so, the New Jersey Supreme Court as well as the legislature, has denoted Second Degree Aggravated Arson a serious offense, applying the presumption of incarceration if convicted, to reflect “the gravity of the offense.” State v. O'Connor, 105 N.J. 399, 405 (1987). This factor weighs in favor of the State.

² The parties do not dispute that the officers had strong probable cause to believe that the DVR contained evidence relevant to the arson investigation. The DVR captured footage of the exterior areas of the home where the fire was believed to have originated, and officers had already determined that the fire was suspicious in nature. This factor weighs in favor of the State.

³ There is also no dispute as to whether there was an armed suspect or a suspect that posed imminent danger. There is no evidence in the record to suggest that any suspect in this case was armed or posed an imminent danger at the time of the DVR seizure. No such threat was articulated by the officers at the scene, nor was there any testimony that officer or public safety required immediate action. Accordingly, this factor weighs in favor of Defendant.

(exigent circumstances found where citizen telephones in a complaint of domestic violence); State v. Castro, 238 N.J. Super (App. Div. 1990) (exigent circumstances found where student believed to have ingested unknown quantity of dangerous substance constituted a medical emergency); State v. Bonta, 235 N.J. Super 236 (App. Div. 1999) (exigent circumstances found where police responded to threat of explosives in residential area). Nevertheless, central to all “exigent circumstances” is that *prompt* action was needed to meet imminent danger. See, e.g., State v. Hemenway, 239 N.J. 111, 126 (2019).

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This urgency, or imminency, is assessed through the lens of responding officers. See State v. Vargas, 213 N.J. 301, 323 (2013). Specifically, a responding officer may enter a home without a warrant if he has the objectively reasonable basis to believe that prompt action is needed to meet an imminent danger. See id. The objective reasonableness of the responding officer’s belief is evaluated at the time of the warrantless search or seizure conducted. See id.

A warrantless search, justified by the exigent circumstances, is not limitless. Rather, the warrant exception is limited to the reasons and objectives that prompted the need for immediate action. See State v. Edmonds, 211 N.J. 117, 134 (2012). Put differently, once “the exigency that justifies immediate action dissipates, the rationale for searching without a warrant is no longer present[,]” and any subsequent Fourth Amendment intrusion requires a warrant or a warrant exception. Id.

The Court has carefully considered the testimony and evidence presented at the hearing, as well as the arguments of counsel. The totality of the circumstances demonstrates that, at the time officers entered the garage and seized the DVR system, the situation did not present an objectively reasonable immediate need for warrantless action.

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The facts establish that by the time of the DVR seizure, the small garage fire, initially located “just inside a garage door on the opposite side of the residence,” had been fully extinguished for nearly thirty minutes. The main fire in the attic and southeast corner of the residence remained active, but the garage was located at the farthest possible point from the remaining fire. The garage had a roof independent of the second story attic. There was no indication the basement extended below the garage’s floor pad. The garage’s roof was structurally intact. The garage was no longer an area of active firefighting, with a complete absence of visible smoke or flame in its vicinity. Sergeant Malone acknowledged that by the time of the DVR seizure, there was no active threat in the garage, and that he was primarily concerned that the DVR might be damaged if the fire worsened unpredictably. Under these circumstances, an objectively reasonable officer would have recognized that the need for immediate warrantless action had dissipated.

The officers’ own conduct further reflects the absence of any perceived exigency. The body camera and testimony reveal that officers engaged in calm,

deliberate conversation with Defendant and his daughter, specifically asking where the DVR was stored. The daughter provided a clear answer: “up and to the left.” After receiving this information, officers obtained a ladder, entered the garage, and physically ascended to the DVR’s location. They took several minutes to disconnect the device and safely remove it. The DVR was not in plain view, and retrieving it required purposeful, investigative action. Such conduct falls outside the limited scope of permissible warrantless activity recognized in Tyler. Bodycam footage shows no evidence of active fire or smoke in the garage at the time of entry. No testimony suggested that firefighting personnel were operating in the garage during the seizure, nor that suppression efforts threatened the DVR’s integrity.

Of course, officers are not required to delay protective or investigative actions simply to confirm whether an emergency will develop or worsen. The U.S. Supreme Court has recognized that the unpredictability of fires can justify warrantless action in some circumstances. Michigan v. Tyler, 436 U.S. 499, 509 (1978) (“A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry ‘reasonable.’”). However, both Tyler and subsequent New Jersey precedent make clear that this allowance is not limitless. Indeed, as later clarified in Michigan v. Clifford,⁴ and consistent with New Jersey authority in State v.

⁴ 464 U.S. 287 (1984).

Manning,⁵ and State v. Miranda,⁶ warrantless actions cannot be justified by a generalized invocation of the unpredictability of fire scenes. Rather, there must be an “articulable, immediate risk” that would reasonably preclude the delay necessary to obtain judicial approval. See Miranda, 253 N.J. at 481.

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In this way, the instant matter is distinguishable from Tyler. Unlike the facts of Tyler, where the premises initially remained dangerous and unstable, the garage here was neither compromised nor actively threatened at the time of the DVR seizure. See Michigan v. Tyler, 436 U.S. at 510. Moreover, the DVR was not in plain view, and its seizure was not incidental to emergency suppression or cause determination. Rather, the circumstances present here more closely align with those in Michigan v. Clifford, where the Supreme Court addressed warrantless searches conducted after emergency response had subsided.

In Clifford, the United States Supreme Court held that once fire cause investigation has concluded and officials transition to a criminal investigatory purpose, further warrantless searches are impermissible absent a new exigency. In Clifford, the Court found that while portions of the home had been damaged, the entry into less-affected areas for the purpose of seizing potential arson evidence violated the Fourth Amendment. The Court emphasized that the scope of the

⁵ 240 N.J. 308 (2020).

⁶ 253 N.J. 461 (2023).

warrantless search “is limited to that reasonably necessary to determine the cause and origin of the fire and to ensure against rekindling[.]” and that when the cause of the fire is known, any broader investigation must proceed under a warrant. See id. at 307 n.9

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Here, as in Clifford, the fire department and investigators had identified the suspicious origin of the fire, located potential accelerants, and determined that a criminal investigation was warranted. The subsequent targeted seizure of the DVR, located in a structurally intact, garage not under active suppression, mirrors the constitutional error in Clifford. The DVR was sought not to assist in ongoing emergency management, but to secure potential evidence for a developing criminal investigation.

This analysis is further supported by New Jersey jurisprudence. State v. Edmonds instructs that the spatial scope of warrantless entry must be confined to the areas where the need for immediate action continues. See Edmonds, 211 N.J. at 134. Here, by the time of the seizure, the garage was no longer an area of active suppression or investigation tied to imminent danger. The entry into that space and removal of the DVR therefore exceeded the limits of any ongoing exigency.

Accordingly, after careful consideration of the record and the governing case law, the Court finds that the State has not met its burden of demonstrating that exigent circumstances existed at the time of the DVR seizure. The Court fully

acknowledges that in the abstract, distinguishing among areas of a structure during an active fire response may seem overly technical or rigid. Fire scenes are, by their nature, dynamic and unpredictable. However, in this instance, the specific facts compel such a distinction. The garage was physically separate from the main areas of active suppression; it was structurally intact at the time of entry; the DVR was not in plain view but required a deliberate search and removal process; and the officers had ample opportunity to pause and seek judicial authorization. Most critically, the State presented no evidence of any articulable, immediate risk to the DVR beyond generalized concerns about the inherent volatility of fires. On this record, the Court finds that the garage was not subject to exigent circumstances that would justify a warrantless entry and seizure.

ii. The Time it Would Have Taken to Secure a Search Warrant

The Court next considers whether the officers had a reasonable opportunity to obtain judicial authorization prior to the seizure of the DVR. This factor is assessed from the perspective of the officers at the time of the seizure, not with hindsight, and requires the State to show that obtaining a warrant would have risked loss of evidence or endangered persons. See e.g., State v. Manning, 240 N.J. at 333; State v. Miranda, 253 N.J. at 481.

Here, the record reflects that the officers arrived on scene at approximately 5:04 a.m. The small garage fire was extinguished shortly thereafter, and the DVR

was not seized until well after 5:30 a.m., following a deliberate conversation with Defendant and his daughter about its location. Officers obtained a ladder, entered the garage, and took several minutes to disconnect and remove the DVR. The Court recognizes that obtaining a telephonic warrant at that early hour would not have been instantaneous. Nothing in the record indicates that delaying to obtain a warrant would have jeopardized the DVR or compromised safety at the scene. Consistent with Miranda, where no articulable risk from delay was shown, the circumstances here required that the officers seek a warrant before proceeding. See State v. Miranda, 253 N.J. at 481.

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In this case, the evidence shows that the garage had stabilized and was not under active suppression. Officers were in open communication with Defendant and his family, asking about the DVR's location and proceeding calmly. There is no evidence that seeking a warrant would have distracted from ongoing suppression efforts, posed a risk to responders, or delayed any critical emergency function. Indeed, the record is silent as to whether any effort was made to obtain a warrant, despite the opportunity to do so. Nor is there any testimony that officers attempted to contact an on-call judge or prosecutor to initiate a telephonic warrant request, or that such an attempt would have been impractical under the circumstances. See State v. Lewis, 227 N.J. Super. 593, 598 (App. Div. 1988), aff'd, 116 N.J. 477 (1989) (characterizing the failure of police to try to obtain a telephone warrant as

“troubling[,]” where “events took place in the middle of a weekday in central Newark where a number of judges are readily available.”).

While the State correctly observes that obtaining a warrant would have taken more than the seven and a half minutes required to extract the DVR, this does not resolve the issue. The inquiry is not whether seeking a warrant would have been faster than seizing the DVR, but whether the officers had reason to believe that delaying to obtain judicial approval would have risked the loss of evidence or safety. State v. Miranda, 253 N.J. at 481. On this record, they did not.

As the U.S. Supreme Court recognized in Michigan v. Clifford, when officials have determined the cause and origin of the blaze and shifted to a criminal investigation, the Fourth Amendment required them to obtain a warrant before conducting a search for evidence of criminal activity. See Clifford, 464 U.S. at 295–96. Here, the calm and deliberate manner in which officers proceeded, combined with the absence of any articulated risk from delay, demonstrates that this factor weighs against a finding of exigency.

iii. The Threat That Evidence Would Be Destroyed or Lost Unless Immediate Action Was Taken

The Court next considers whether the warrantless seizure of the DVR was justified by an imminent risk that the evidence would be destroyed or lost if immediate action were not taken.

The State must do more than present general concerns about the volatility of fire scenes. It must point to specific facts demonstrating an immediate threat to the evidence. See e.g., State v. Holland, 328 N.J. Super. 1, 7 (App. Div. 2000) (State must demonstrate a “realistic danger” that evidence of a crime will be destroyed or will disappear before a warrant can be obtained); State v. Lewis, 116 N.J. 477, 488 (1989) (holding that where officers could maintain surveillance of premises, surveillance while a warrant was obtained was clearly the appropriate police procedure).

In this instance, the DVR was housed in a structurally intact garage that had already been cleared of active fire. Body camera footage shows no smoke or firefighting activity in that space at the time of seizure. Officers entered calmly, set up a ladder, and took deliberate action to remove the DVR. There is no evidence that suppression crews were preparing to douse the garage, that the DVR was exposed to active fire damage, or that any time-sensitive degradation of the device was underway.

In addition, officers were on scene, visually monitoring the property. The DVR was in a fixed location, subject to no imminent threat, in an area of the home where no suspect was acting to remove or destroy it. As the Court noted in Lewis, where officers can maintain surveillance of the scene while obtaining a warrant, that is the “appropriate police procedure.” Lewis, 116 N.J. at 488. The same principle

applies here. Officers had complete control over the scene, and nothing in the record supports the assertion that delaying to obtain a warrant would have jeopardized the DVR.

In short while the State suggests that the unpredictable nature of fires justified
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immediate seizure of the DVR, the record does not establish any specific, imminent threat to the evidence at the time of the seizure. The State's argument that the volatility of the scene created an ongoing risk is not supported by the record, which shows that the DVR was stable, secured, and subject to officer control. The DVR was fully observable, not in active danger, and could have been secured by obtaining judicial authorization as required under settled law. On this record, the Court concludes that this factor weighs heavily in favor of Defendant.

b. Consent

Although suppression is warranted based on the unlawful seizure itself, the Court has also considered Defendant's argument that any subsequent consent to search the DVR was insufficient to cure the constitutional violation.

Under well-settled New Jersey law, voluntariness of consent alone is not enough to purge the taint of a prior unlawful seizure. Where property has already been seized in violation of the Fourth Amendment, the State must demonstrate that the consent to search was sufficiently attenuated from the illegal seizure to remove the taint. See State v. Rodriguez, 172 N.J. 117, 132 (2002); State v. Cassidy, 179

N.J. 150, 157 (2004). In making this determination, courts consider the temporal proximity between the illegal conduct and the consent, the presence or absence of intervening circumstances, and the purpose and flagrancy of the official misconduct.

See *Rodriguez*, 172 N.J. at 132.

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Here, the record reflects that Defendant provided written consent to search the DVR at approximately 11:37 a.m., after the DVR had already been seized without a warrant and placed in police custody. The DVR remained in police control throughout the morning, and there were no intervening events that would have broken the causal chain between the unlawful seizure and the subsequent consent. Moreover, the consent was obtained in the context of an ongoing investigation in which Defendant had no realistic ability to reclaim the DVR or reverse the prior police action. While the Court finds that the consent itself was voluntary in the ordinary sense, not the product of coercion or deception, voluntariness alone is not sufficient under the applicable standard. In the absence of meaningful attenuation, the taint of the prior unlawful seizure remains. See Cassidy, 179 N.J. at 157.

Accordingly, the Court concludes that even if suppression were not already required based on the unlawful seizure, the subsequent consent to search the DVR would not, under these circumstances, cure the constitutional violation or render the search lawful.

IV. CONCLUSION

Thus, having carefully weighed the relevant factors and considered the totality of the circumstances, the Court finds that the State has not met its burden to establish that the warrantless seizure of the DVR was justified by exigent circumstances.

While the seriousness of the offense and strength of probable cause weigh in the State's favor, the more critical factors —the lack of urgency at the time of seizure, the reasonable opportunity to obtain judicial authorization, the absence of any articulable threat to the DVR, and the lack of any risk to officer safety — weigh heavily in favor of Defendant. On this record, the Court concludes that the seizure of the DVR violated Defendant's constitutional rights, and the motion to suppress will be **GRANTED.**

