SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO**.** A-1845-23

STATE OF NEW JERSEY, Plaintiff-Respondent, v. JOSE PEREZ, a/k/a JOSE M. PEREZ, Defendant-Appellant.	Criminal Action On Appeal from a Judgment of Conviction in the Superior Court of New Jersey, Law Division, Ocean County Indictment No. 22-12-2198-I Sat Below: Hon. Michael T. Collins, J.S.C. Hon. Kimarie Rahill, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT JOSE PEREZ

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July 18, 2025

DEFENDANT IS CONFINED

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[1] The trial court suppression briefs are included in the appendix pursuant to Rule 2:6-1(a)(2) solely to establish the issues that were raised before the trial court.

RECORD CITATIONS

Da -- Appendix to Defendant-Appellant's Letter-Brief

1T -- November 12, 2021, Motion Transcript (Collins, J.S.C.)

2T -- January 31, 2022, Status Conference Transcript (Puglisi, J.S.C.)

3T -- May 10, 2023, Motion Transcript (Rahill, J.S.C.)

4T -- June 5, 2023, Status Conference Transcript (Rahill, J.S.C.)

5T -- October 2, 2023, Plea Transcript (Rahill, J.S.C.)

6T -- October 27, 2023, Sentencing Transcript (Rahill, J.S.C.)

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PROCEDURAL HISTORY

On August 4, 2021, an Ocean County grand jury returned Indictment No. 21-08-972-I charging defendant Jose Perez with third-degree unlawful firearm possession, N.J.S.A. 2C:39-5(c)(1); third-degree unlawful weapon possession, N.J.S.A. 2C:39-3(b); and second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b)(1). (Da1-3)

On November 12, 2021, the Honorable Michael T. Collins, J.S.C., heard testimony on Perez's motion to suppress evidence that police officers seized from his car. (1T) On December 6, 2021, Judge Collins denied Perez's motion to suppress in a written opinion and order. (Da28-36)

On December 14, 2022, superseding Ocean County Indictment 22-12-2198-I charged Perez with third-degree unlawful possession of a prohibited weapon, N.J.S.A. 2C:39-3(b) (Count 1); first-degree unlawful possession of a shotgun with a prior NERA conviction, N.J.S.A. 2C:39-5(j) (Count 2); and second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b)(1) (Count 3). (Da7-9)

On May 10, 2023, the Honorable Kimarie Rahill, J.S.C., held a hearing on Perez's motion for reconsideration of Judge Collins's suppression ruling. (3T) At the hearing, the State conceded that certain statements made by Perez must be suppressed per Miranda v. Arizona, 384 U.S. 436 (1966). (3T3-23 to

4-6) On June 7, 2023, Judge Rahill denied in part Perez's motion for reconsideration in a written opinion and order. (Da56-66)

On October 2, 2023, Perez pleaded guilty, pursuant to a negotiated plea agreement, to one count of second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b). (5T; Da67-72) On October 27, 2023, Judge Rahill sentenced Perez, consistent with the plea agreement, to a 5-year prison term with 5 years of parole ineligibility. (6T; Da73-75)

On February 22, 2024, Perez filed a notice of appeal. (Da76-78) On March 11, 2024, this Court granted Perez's motion to file the notice of appeal as within time. (Da79)

STATEMENT OF FACTS

A. The Suppression Hearing. (1T)

The State called Patrolman Brandon Burkhardt of the Lakewood Township Police as its only witness at the suppression hearing. (1T6-7 to 59-11) Portions of Burkhardt's body camera video (Da10) were played for the court and entered into evidence. (1T15-18 to 28-7, 56-18 to 60-7)

Burkhardt testified that on March 10, 2021, he responded to a motor vehicle accident on Caranetta Drive in Lakewood. (1T6-21 to 7-2) When he arrived on scene, he observed Perez standing outside Perez's car speaking to Officer Soriano, whose first name was not included in the record. (1T30-7 to

11; Da10 at 21:04:00 to 21:05:10) Soriano had arrived before Burkhardt. (1T9-17 to 20, 29-22 to 30-2) Burkhardt learned that Perez's car had struck two parked cars and become disabled in the street. (1T7-3 to 8-5)

The officers asked Perez to try to move the car, and Perez entered the front driver's-side door, sat down in the car, and started the engine; the car was unable to move, however, and Perez got out. (Da10 at 21:05:00 to 21:05:45; 1T17-19 to 19-5) Soon after, the officers again asked Perez to try to move the car and "see what happens if you give it a little gas"; Perez got into the driver's seat again and revved the engine, but the car was still unable to move. (1T19-14 to 21-10; Da10 at 21:06:00 to 21:06:40) Burkhardt confirmed in his testimony that the officers allowed Perez to twice enter his car using the driver's-side door. (1T30-18 to 31-7)

Burkhardt then walked back to his police car. (Da10 at 21:08:30 to 21:09:20) When Burkhart returned shortly thereafter, Perez was searching for his insurance card in his car's trunk. (1T10-8 to 14; Da10 at 21:09:40 to 21:10:00) Burkhardt testified that, at this point, he had no reason to be suspicious of Perez. (1T30-12 to 17) Burkhardt asked Perez, "So, you're just going to walk [home], or you're going to -- do you want me to give you a ride?" (1T21-12 to 16, 31-14 to 32-3) At some point, Soriano called for a tow truck. (1T8-6 to 8, 30-3 to 6)

The officers spoke to Perez while he looked in the trunk of his car for his driving credentials. (1T31-14 to 17, 9-21 to 10-14: Da10 at 21:10:00 to 21:10:15) At that point, Burkhardt again testified that Perez had given the officers no reason to suspect anything criminal. According to Burkhardt, it was "[j]ust a normal motor vehicle crash." (1T31-5 to 32-21)

While Perez continued looking through his car's trunk, Burkhardt used his flashlight to look into Perez's car. (1T10-15 to 18, 32-22 to 25; Da10 at 21:10:15 to 21:10:55) First, Burkhardt looked through the front driver's-side open window. (1T10-19 to 23; Da10 at 21:10:15 to 21:10:35) He saw "numerous $20 bills stamped with like a red and black ink, looked like Japanese or Chinese letters or symbols, all across the floorboard." Burkhardt thought "that seemed a bit unusual." (1T10-24 to 11-6, 33-5 to 10) Then, he testified that he "observed in a blue nylon sleeve about two feet in length, it was down on the -- where the gas pedal would be, with the end resting on the driver's seat, to the left side of the center console where like the shifter is." (1T11-7 to 16)

Burkhardt next walked to the passenger side of the car and used his flashlight to look through the closed front passenger window. (Da10 at 21:10:35 to 21:10:55) Burkhardt then asked Soriano to look at the blue bag.

Soriano left Perez by the trunk, walked to the front of the car, and used his own flashlight to look into the driver's-side window:

> OFFICER BURKHARDT: What does this thing look like to you? In that blue bag.
>
> UNIDENTIFIED SPEAKER [OFFICER SORIANO]: Ooh, I don't know. (Indiscernible)
>
> [1T22-17 to 24; Da10 at 21:10:55 to 21:11:15]

Burkhardt testified that

> [w]hat concerned me about [the blue nylon bag] was that the opening was facing back towards where the driver would sit, and there was a wooden oval shaped like a handle visible just barely in the bag, and it appeared to have been roughly cut. And my initial suspicion was that it could be a firearm because of the oval shape resembling the stock of a long gun such as a rifle. So then, I had walked around the other side to get -- try to see it from another angle. And then I also had -- excuse me -- Officer Soriano take a look at it and see what he thought.
>
> [1T11-20 to 7]

After Soriano told Burkhardt that he couldn't tell what was in the blue bag, Burkhardt asked Perez, who was still looking for his credentials in the trunk, about the bag:

> OFFICER BURKHARDT: Hey, man, what's in that blue bag? It's not a weapon, is it?
>
> THE DEFENDANT: Where?

> UNIDENTIFIED SPEAKER [OFFICER SORIANO]: Up here.
>
> [1T22-21 to 24; Da10 at 21:11:15 to 21:11:20]

At that point, Perez walked from the trunk to the front of the car, and Burkhardt and Perez looked together through the open driver's-side window at the bag. (Da10 at 21:11:15 to 21:11:25) The conversation between Burkhardt and Perez continued:

> OFFICER BURKHARDT: This thing. It looks like the butt of a rifle. Like a old -- nah? This blue thing. This.
>
> THE DEFENDANT: Oh, nah.
>
> [1T22-25 to 23-3; Da10 at 21:11:15 to 21:12:30]

Perez then walked back to the trunk and Burkhardt remained by the driver's-side window. (Da10 at 21:11:25 to 21:11:35) While Perez stood by the trunk, Burkhardt then asked Perez:

> OFFICER BURKHARDT: Nah? What is that? Mind if I just make sure it's not a weapon?
>
> THE DEFENDANT: Nah, it's just over there.
>
> UNIDENTIFIED SPEAKER: What is it?
>
> THE DEFENDANT: (Indiscernible)
>
> [1T23-4 to 8; Da10 at 21:11:15 to 21:11:30]

At that point, Burkhardt reached into the car and opened the blue bag. (Da10 at 21:11:35 to 21:11:45) Burkhardt did not say anything at first. Instead,

he walked to the back of the car and stood with Perez and Soriano by the trunk as Perez continued looking through the trunk. (Da10 at 21:11:40 to 21:11:50) Moments later, while standing by the trunk with Perez and Soriano, Burkhardt stated:

> OFFICER BURKHARDT: Hey, man, hold on, hold on, hold on. That's a rifle.
>
> THE DEFENDANT: Huh?
>
> OFFICER BURKHARDT: It's a rifle. Put your hands on top of your head.
>
> [1T23-9 to 13; Da10 at 21:11:40 to 21:12:00]

On cross-examination, Burkhardt explained that he saw "[p]erhaps [a] four to five inch wooden oval sized object, visible from outside the vehicle, without breaking the plane of the window. That's what initially caused me to be suspicious." (1T44-3 to 6) Burkhardt stated that "It was roughly cut. My first thought, I was like, 'Is that a baseball bat or a short bat?' But I'm like, 'No, it's -- a bat would be like a round maybe two inch in diameter circle. This is more of a[n] oval shape.'" (1T53-4 to 17)

Burkhardt conceded that when he ultimately decided to reach into the car he remained unsure what was inside the blue bag:

> DEFENSE COUNSEL: And when you saw that nylon bag in your report you said, "I observed the driver's seat area approximately a two foot long item concealed in the blue nylon sleeve." Correct?

> OFFICER BURKHARDT: Correct.
>
> DEFENSE COUNSEL: What does the word "concealed" mean to you?
>
> OFFICER BURKHARDT: Hidden within or covered by.
>
> DEFENSE COUNSEL: Okay. So, it was not immediately known what the item was; correct?
>
> OFFICER BURKHARDT: I wasn't a hundred percent sure.
>
> DEFENSE COUNSEL: You weren't sure at all; were you? You had a -- you had a feel -- you had a hunch; correct?
>
> OFFICER BURKHARDT: I'd say I had a strong hunch. That's why I suggested it was a fire -- a weapon when I --
>
> DEFENSE COUNSEL: You only had a hunch. You didn't know what it was; correct?
>
> OFFICER BURKHARDT: I had a high degree of certainty what it was, but --
>
> [1T33-11 to 34-3; see also 1T40-6 to 14 (Burkhardt: "That was my suspicion" was that it was a "long gun," but "[n]ot a hundred percent."), 44-12 to 21 (Burkhardt: "Again, not a hundred percent, but I . . . had a high degree of confidence . . . that it was [a gun]."))]

Burkhardt testified that Perez "didn't give me clear and, you know, consent" and "his evasive answer increased my suspicions of what I already believed was a weapon to be a weapon. At that point, I reached in just enough

to inspect the opening to confirm or deny said suspicion." (1T 42-21 to 43-1; see also 1T12-12 to 13-11 (calling Perez's response an "evasive answer")) Burkhardt continued: "The opening that was already partially visible where I saw an item that I believed to be a weapon, I pulled it just enough to see a trigger guard, trigger, which confirmed my suspicions. . . . I'd say I went from about 95 to a hundred percent confidence at that point." (1T43-3 to 16)

The officers put Perez, who was still standing at the trunk of his car, in handcuffs. (Da10 at 21:12:20 to 21:12:30) Officer Soriano then removed the shotgun from Perez's car. (1T13-23 to 14-5, 15-15 to 17) In Perez's car, police also found a flare gun, over $600 dollars in $20 dollar bills that, according to Burkhardt, were "clearly not real money," a half-full bottle of brandy, one shotgun round, and "inoperable [wooden] pieces of firearms," though Burkhardt testified that these recovered items were not "concerning." (1T14-7 to 15-14)

B. The Law Division Denies Perez's Suppression Motion. (Da28-36)

Perez moved to suppress the evidence of the car search. (Da11-12) The State's response brief argued "[t]he seizure of the firearm was valid under the plain view exception to the warrant requirement." (Da19 (citing State v. Reininger, 430 N.J. Super. 517, 536-37 (App. Div. 2013)). The State did not

raise any other legal justification for the search and seizure in its brief (Da13-19) or at argument (1T59-18 to 72-1).

On December 6, 2021, Judge Collins denied Perez's suppression motion in a written opinion and order. (Da28-36) After finding "Burkhardt's testimony credible" (Da33), the court ruled that the State had satisfied the plain view doctrine. First, the court held that "[t]he testimony established that Burkhardt made his observations of the nylon bag while standing outside the vehicle," (Da32-33) so "police were lawfully in the viewing area" (Da35) and thus "the first prong of the plain view exception is satisfied." (Da33) Second, "[t]he nature of the evidence was immediately apparent because the outward appearance of the nylon bag, Burkhardt's 'high degree of certainty' that the bag contained a firearm[,] and Defendant's evasive answers established probable cause to associate the property seized with criminal activity," so "the 'immediately apparent' prong is satisfied." (Da35) The court made the following factual findings to support its plain view ruling:

> (1) when Burkhardt observed the wooden oval visible from the opening in the nylon bag, he believed it resembled the stock of a rifle; (2) the outward appearance of the nylon bag, which was two (2) feet in length, enhanced Burkhardt's suspicion that the bag contained a firearm; (3) the portion of the firearm visible to Burkhardt appeared to have been roughly cut; (4) counterfeit money was visible on the floorboard of Defendant's vehicle; (5) Defendant gave evasive answers to Burkhardt's questioning regarding the

> contents of the nylon bag; (6) the nylon bag was leaning against the driver's seat, where the firearm was easily accessible to Defendant; (7) under vigorous cross-examination by Defense counsel, Burkhardt testified he had a high degree of certainty that the item within the nylon bag was a firearm.
>
> [Da34-35]

C. The Law Division Denies in Part Perez's Reconsideration Motion. (Da56-66)

Perez filed a motion for reconsideration. (Da37-40) At the motion hearing, the State conceded that Perez's statements to police at the scene, as well as during a later interview, must be suppressed and should not be considered. (3T3-23 to 4-14 (Prosecutor: "The State is conceding that there was violations at the roadside stop which then would have -- which did taint the statement that was given post-Miranda at the station."); (Da59) However, the State maintained that "this Miranda issue does not affect the plain view seizure of the weapon." (3T29-8 to 17; see also 3T35-21 to 36-4 (Prosecutor: "the State would submit that it is enough because this was clearly decided on plain view. . . . So, even without the statements, we still clearly satisfy the plain view exception."))

On June 7, 2023, Judge Rahill granted in part and denied in part Perez's reconsideration motion. (Da56-66) First, the court held that the State's "stipulation in this matter that Defendant was not advised of his Miranda

rights, considerations previously enumerated to inform findings in support of the plain view exception relied upon, require further review in order to confirm the basis remains in their absence." (Da60-61) Judge Rahill then ruled that, even without Perez's un-Mirandized statements at the scene, the plain view doctrine still justified the officers' search and seizure. (Da62-66)

First, the court explained, "Burkhardt made his observations of the nylon bag while standing outside the vehicle and, as such, the Court finds the first prong of the plain view exception is satisfied." (Da64) Second, "the outward appearance of the nylon bag as well as Burkhardt's observations of the firearm itself as the contents of the bag were partially visible" satisfied the plain view doctrine's "immediately apparent" prong. (Da65-66) Judge Rahill's opinion relied on the same factual findings as Judge Collins's opinion did, except it omitted Judge Collins's previous finding that "Defendant gave evasive answers to Burkhardt's questioning regarding the contents of the nylon bag," and qualified that the currency Burkhardt saw on the floorboard was "what appeared to be counterfeit money[.]" (Da65)

LEGAL ARGUMENT

POINT I

SUPPRESSION IS REQUIRED BECAUSE THE POLICE CONDUCTED A WARRANTLESS SEARCH AND SEIZURE AND THE PLAIN VIEW DOCTRINE DID NOT APPLY. (Da28-36, 56-66)

Both the Federal and State Constitutions guarantee "[t]he right of the people to be secure . . . against unreasonable searches and seizures[.]" U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7. Under both constitutions, "searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Goldsmith, 251 N.J. 384, 398 (2022) (quotation omitted). "Consequently, the State bears the burden of proving by a preponderance of the evidence that the warrantless search or seizure fell within one of the few well-delineated exceptions to the warrant requirement." Id. at 399 (quotation omitted) (cleaned up). If the State does not raise an applicable exception or cannot meet its heavy burden of proof, the evidence must be suppressed. State v. Bryant, 227 N.J. 60, 71 (2016). Any additional "evidence that is seized in a search incident to the original unlawful search is also excluded under the fruit of the poisonous tree doctrine." Ibid. (citation omitted).

To justify the officers' warrantless search and seizure in this case, the State chose to rely exclusively on the plain view doctrine. (Da13-19)

"Under the plain-view doctrine, the constitutional limiting principle is that [1] the officer must lawfully be in the area where he observed and seized the incriminating item or contraband, and [2] it must be immediately apparent that the seized item is evidence of a crime." State v. Gonzales, 227 N.J. 77, 101 (2016). Although the Law Division's factual findings are due deference, this Court must review de novo "the consequences that flow from established facts" and the "trial court's legal conclusion[]" that the plain view doctrine justified the officers' search and seizure. State v. Nyema, 249 N.J. 509, 526-27 (2022) (quotation omitted).

Because the plain view doctrine did not authorize the police's intrusion into Perez's car, search of the blue bag, or seizure of the gun, the court should have suppressed the gun recovered from Perez's car. And even if the plain view doctrine did apply, the State failed to prove that it was "immediately apparent" that the blue bag contained contraband. For these reasons, reversal is required. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

A. The plain view doctrine did not provide a legal basis for the officer's intrusion into the car to search the bag and seize the gun, and the State raised no other exception to the warrant requirement.

In short, this is not a plain view case. There is no dispute that Patrolman Burkhardt stood lawfully outside Perez's car when he looked in with his flashlight. See Gonzales, 227 N.J. at 101. But the plain view doctrine did not

provide a legal basis for Burkhardt to take the next step and enter Perez's car, search the blue bag, and seize the gun. For those intrusions, he needed a separate exception to the warrant requirement. Because the State never offered another legal justification in the Law Division, suppression is required.

For the plain view doctrine to apply, "not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself." Horton v. California, 496 U.S. 128, 137 (1990). In other words, the doctrine "authorizes seizure of illegal or evidentiary items visible to a police officer" only if the officer's "access to the object has some prior Fourth Amendment justification[.]" Illinois v. Andreas, 463 U.S. 765, 771 (1983); see also Collins v. Virginia, 584 U.S. 586, 596 (2018) ("[A]n officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant[.]"). For that reason, "'[p]lain view' is perhaps better understood, therefore, not as an independent 'exception' to the warrant clause, but simply as an extension of whatever the prior justification for an officer's 'access to an object' may be." Texas v. Brown, 460 U.S. 730, 738-39 (1983) (warning that "'plain view' provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment").

Of course, an officer who has seen contraband in a constitutionally protected space can use what he saw to apply for a search warrant. Or he can try to justify his entry into that protected space by pointing to another exception to the warrant requirement. But an officer cannot enter a constitutionally protected space on the sole basis that he saw contraband inside. At bottom, "plain view alone is never enough to justify the warrantless seizure of evidence." Coolidge v. New Hampshire, 403 U.S. 443, 468 (1971).

When our Supreme Court most recently articulated the plain view doctrine in Gonzales, it likewise advised that "the constitutional limiting principle is that the officer must lawfully be in the area where he observed and seized the incriminating item or contraband[.]" 227 N.J. at 101 (emphasis added); see also State v. Lewis, 116 N.J. 477, 485 (1989) ("Proper application of the 'plain view' doctrine requires not only the preexistence of probable cause, but also that the officer's access to an object have some prior justification under the Fourth Amendment." (quotation omitted) (cleaned up)). Put simply, a valid plain view seizure requires the police to be lawfully in the seizing area -- not just the original viewing area.

In two recent decisions, Judge Susswein detailed this vitally important -- but often ignored -- legal distinction between (1) the legal basis for where an officer stands when he sees contraband in plain view and (2) the separate legal

basis required for where the officer eventually moves to actually touch, search, and seize the contraband. In State v. Johnson, 476 N.J. Super 1 (App. Div. 2023), this Court considered a search of a car to find the driver's credentials. Judge Susswein warned that "the plain view exception does not authorize police to cross the threshold of a constitutionally protected place." Id. at 20-21. "Rather, the plain view exception presupposes the officer is already lawfully present within the premises -- or vehicle -- at the moment the observation is made." Ibid. (citation omitted). In State v. Mellody, 479 N.J. Super. 90 (App. Div. 2024), this Court considered whether officers legally entered a home through an open garage door. Judge Susswein again underscored that, "[w]hile an open door may, depending on fact-sensitive circumstances, expose to 'plain view' certain contents of a garage, even then, police may not enter the garage based solely on the plain view observation of contraband inside." Id. at 116 (citing Johnson, 476 N.J. Super. at 21).

Other decisions, too, have made clear that the plain view doctrine does not permit a search and seizure that takes place in a different space than where a police officer legally stood when he first viewed the contraband. In State v. Ingram, 474 N.J. Super. 522 (App. Div. 2023), for example, Judge Gilson explained that if an officer "had seen defendant holding [a] vial of PCP through the window of the home," and "then observed defendant place the vial

down somewhere out of view, walk outside, and leave the home," the officer still "would not have been entitled to go up to the home and reach through the window or otherwise enter the home to conduct a search without a warrant." Id. at 538-39; see also Collins, 584 U.S. at 594 (describing a similar scenario).

Then-Presiding Judge Skillman likewise cautioned over two decades ago that, "even when police make a plain view observation of evidence or contraband without a prior search, they are not automatically entitled to seize the item" because "'not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself.'" State v. Pineiro, 369 N.J. Super. 65, 73 (App. Div. 2004) (quoting Horton, 496 U.S. at 136-37). "Consequently," this Court continued, "a police officer may seize an item revealed by a plain view observation only if . . . the seizure can be made without intruding into any constitutionally protected area or the intrusion can be made in conformity with the Fourth Amendment." Id. at 73-74; see also State v. O'Herron, 153 N.J. Super. 570, 575 (App. Div. 1977) ("Simply describing an object as being in 'plain view,' then, is not sufficient to justify its warrantless seizure" because "a warrantless seizure may be made of items in 'plain view' in a location where the officer has a right to be," but "the presence of the items cannot alone supply justification for a police officer's presence at that location.").

Taken together, the upshot from the case law is clear: The fact that Patrolman Burkhardt saw potential contraband while standing outside Perez's car did not grant him the authority to enter the constitutionally protected space of the car to search the bag and seize the gun. Yet that was the exact argument made by the State and adopted by the Law Division in this case. Neither the State nor the Law Division pointed to another constitutional basis or separate exception to the warrant requirement to justify Patrolman Burkhardt's entrance into Perez's car. (Da13-19, 41-47 (State's briefs); Da28-36, 56-66 (Court's opinions))

Ultimately, then, because the plain view doctrine cannot alone justify Burkhardt's intrusion into the car, his search of the bag, and the seizure of the gun, and because the State failed to raise or develop facts to support another exception to the warrant requirement that would justify those actions, the officer's warrantless search and seizure was unlawful. Goldsmith, 251 N.J. at 398-99; Bryant, 227 N.J. at 71 (holding that the State must prove an applicable exception to the warrant requirement, or else the evidence must be suppressed). As our Supreme Court warned in Gonzales,

> Plain view, in most instances, will not be the sole justification for a seizure of evidence because police must always have a lawful reason to be in the area where the evidence is found. Thus, when necessary, the police will also be required to comply with the warrant

> requirement or one of the well-delineated exceptions to that requirement.
>
> [227 N.J. at 104.]

The trial court relied on the parties' agreement that Patrolman Burkhardt was lawfully standing outside the car when he first viewed the blue bag. (Da32-33, 62-64) But, as detailed above, that is only the first half of the plain view doctrine's "lawful presence" requirement. Once Burkhardt decided that he was going to reach inside the car, he also needed a separate Fourth Amendment basis to enter the car, search the blue bag, and seize the gun concealed inside. Although Burkhardt was lawfully in the viewing area (standing outside the car), the State provided no legal basis for his entry into the constitutionally distinct seizing area (inside the car and the blue bag). See State v. Keaton, 222 N.J. 438, 450 (2015) ("A defendant's constitutional right to privacy in his vehicle and personal effects cannot be subordinated to mere considerations of convenience to the police[.]" (quotation omitted) (cleaned up)). Plain view alone cannot justify Burkhardt's intrusion into a different constitutionally protected space.

The State and Law Division also pointed to State v. Reininger, 430 N.J. Super. 517 (App. Div. 2013). (Da16-19, 34-35, 64-66) In that case, citing the plain view doctrine, this Court upheld the search of a car and seizure of guns inside. Id. at 535-36. But that case was decided before our Supreme Court

made explicit in Gonzales that the doctrine's "lawful presence" prong requires that the officer must also "lawfully be in the area where he . . . seized the incriminating item or contraband[.]" 227 N.J. at 101. Moreover, the parties did not litigate, and Reininger did not grapple with, the essential requirement that the officer must already be lawfully present in the seizing area.

In sum, the State had the burden of justifying the police's warrantless entry into Perez's car, his search of the blue bag, and the seizure of the gun by identifying an applicable exception to the warrant requirement in the trial court. The State failed to do so. As detailed above, the plain view doctrine did not permit Patrolman Burkhardt to enter the car and search the blue bag. Nor did it permit Officer Soriano to ultimately seize the gun. Despite being given the opportunity to do so, the State failed to offer any separate constitutional basis for those intrusions, and instead solely relied on plain view. For these reasons, the evidence seized during the warrantless search of the car must be suppressed.

B. Even if the plain view doctrine applied, it was not satisfied because it was not immediately apparent that the blue bag contained a gun.

The plain view doctrine's first prong requires that it was "immediately apparent" that the blue bag contained contraband. Gonzales, 227 N.J. at 101. "[E]vidence of a crime is 'immediately apparent' under the plain-view doctrine when the officer possesses 'probable cause to associate the property with criminal activity.'" Id. at 93 (quoting Brown, 460 U.S. at 741-42). The inquiry focuses on "what the police officer reasonably knew at the time of the seizure." State v. Johnson, 171 N.J. 192, 213 (2002). "Without probable cause to search th[e] item, plain view does not justify the search." State v. Harris, 457 N.J. Super. 34, 46-47 (App. Div. 2018).

The probable cause standard is demanding. Our courts have emphasized that probable cause is an objective determination based on the totality of the circumstances and requires a "well-grounded suspicion" and a "fair probability that contraband or evidence of a crime will be found in a particular place." State v. Chippero, 201 N.J. 14, 28 (2009) (quotations omitted). The State must prove "more than a mere hunch or bare suspicion, but less than the legal evidence necessary to convict[.]" State v. Irelan, 375 N.J. Super. 100, 118 (App. Div. 2005) (citing State v. Burnett, 42 N.J. 377, 386-87 (1964)); see also State v. Pineiro, 181 N.J. 13, 27 (2004) ("A seizure cannot -- we emphasize

cannot -- be justified merely by a police officer's subjective hunch." (quotation omitted)); State v. Sansotta, 338 N.J. Super. 486, 491 (App. Div. 2001) (probable cause "cannot be based upon a mere hunch"); see, e.g., Pineiro, 181 N.J. at 27-29 (holding that a suspected drug dealer's passing of a potentially innocuous cigarette pack, while providing reasonable suspicion, did not provide probable cause).

Here, Patrolman Burkhardt's testimony made clear that, when he was standing outside the car, he did not have probable cause that the blue bag inside Perez's car contained a gun. When Burkhardt arrived at the accident scene, he testified that he had no reason to be suspicious because it was "[j]ust a normal motor vehicle crash." (1T30-12 to 32-21) Indeed, the officers twice asked Perez to enter the car and start the engine to try to move it. (1T17-19 to 21-10, 30-18 to 31-7; Da10 at 21:05:00 to 21:06:40) Burkhardt even offered Perez a ride home. (1T21-12 to 16, 31-14 to 32-3).

Once Burkhardt shined his flashlight into Perez's car and observed the blue nylon bag, he testified that his "initial suspicion was that it could be a firearm because of the oval shape resembling the stock of a long gun such as a rifle." (1T11-20 to 7) But he wasn't sure, so he asked Officer Soriano to take a look. Soriano also wasn't sure, and responded that "I don't know" what is in the blue bag. (1T22-17 to 20; Da10 at 21:10:55 to 21:11:15) At that point,

Burkhardt may have had an unconfirmed hunch, but certainly had far less than probable cause that the bag concealed a gun.

Burkhardt then called Perez over, and asked: "Hey, man, what's in that blue bag? It's not a weapon, is it?" (1T22-21 to 24) With no objection from Burkhardt, Perez walked to the front of the car, stood next to Burkhardt, and peered into the open front driver's-side window. (Da10 at 21:11:15 to 21:11:25) If Burkhardt had probable cause that there was a firearm in the blue bag, would he have let Perez walk to the front of the car and get within arms-reach of it? Of course not.

Perez replied to Burkhardt's question -- "It's not a weapon, is it?" -- with a straightforward denial: "Nah, it's just over there" and then walked back to the trunk to continue looking for his credentials. (1T22-21 to 23-3; Da10 at 21:11:15 to 21:12:30) Nothing in that answer provided additional probable cause. Nor did Perez's declining to consent to a search. See Brown v. State, 230 N.J. 84, 111 (2017) ("[I]nvocation of a person's constitutional right to refuse an officer's request for a consent search is not probative of wrongdoing and cannot be the justification for [a] warrantless entry[.]" (quotation omitted)); see State v. Elders, 192 N.J. 224, 250 (2007) (affirming trial court's finding that a "'hunch' that 'something was wrong'" did not provide officers with "the requisite suspicion" to "request consent to search" a car).

At that point, Burkhardt reached into the car, opened the bag, and spotted the gun. Yet Burkhardt's own testimony revealed that his search was ultimately premised on his own guesswork. He described his thought process with various terms during his testimony, all of which fall short of probable cause -- including "I wasn't a hundred percent sure."; "I'd say I had a strong hunch."; "I had a high degree of certainty what it was[.]" (1T33-11 to 34-3); "That was my suspicion" that it was a "long gun," but "[n]ot a hundred percent." (1T40-6 to 14); and "not a hundred percent, but I . . . had a high degree of confidence . . . that it was [a gun]." (1T44-12 to 21) In the end, Burkhardt explained that "I reached in just enough to inspect the opening to confirm or deny said suspicion." (1T 42-21 to 43-1) But even reasonable suspicion requires more than a hunch. See Nyema, 249 N.J. at 527-28. And here, Burkhardt needed to have probable cause, which demands far more. Chippero, 201 N.J. at 28; Pineiro, 181 N.J. at 27; Irelan, 375 N.J. Super. at 118. Given Burkhardt's testimony and the undisputed facts revealed in the body camera video, the State did not meet that heavy burden here.

It's worth noting that, even after Burkhardt opened the blue bag and looked inside, the body camera video reveals that Burkhardt did not immediately announce that he had found a gun. (Da10 at 21:11:30 to 21:12:00) Instead, after reaching into the car and opening the bag, Burkhardt slowly

walked to the back of the car, where Perez was looking through the trunk with Officer Soriano and, almost 10 seconds after he finished reaching into the car, Burkhardt stated "Hey, man, hold on, hold on, hold on. That's a rifle." (1T22-17 to 23-13; Da10 at 21:11:40 to 21:12:00) So it is not even clear that it was "immediately apparent" what was in the blue bag even after Burkhardt had conducted his initial search. If Burkhardt had opened the bag and clearly recognized a gun, wouldn't he have immediately announced it and moved to arrest Perez? Instead, he waited nearly 10 seconds to do so.

In short, Patrolman Burkhardt's testimony made clear that his suspicion did not rise to probable cause. His actions were also inconsistent with an officer who had probable cause that a gun was present in the car. For these reasons, it was not immediately apparent that the blue bag concealed a gun. Gonzales, 227 N.J. at 93, 101. And because the State thus failed to satisfy the first prong of plain view doctrine, suppression is required.

CONCLUSION

The plain view doctrine did not provide a legal basis for the police's warrantless entry into Perez's car, search of the blue bag, and seizure of the gun. And even if the doctrine could apply, the State did not satisfy it. For these reasons, this Court should reverse the Law Division's denial of Perez's motion to suppress. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

Respectfully submitted,

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Dated: July 18, 2025

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-001845-23

STATE OF NEW JERSEY,	:	Criminal Action
Plaintiff-Respondent,	:	On Appeal from a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division, Ocean County.
v.	:	
JOSE M. PEREZ,	:	Sat Below: Hon. Michael T. Collins, J.S.C., Hon. Kimarie Rahill, J.S.C.
Defendant-Appellant.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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August 27, 2025

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PRELIMINARY STATEMENT

Responding to the scene of a single-car crash, police observed through the vehicle's open driver's door window a two-foot-long object in a nylon sleeve or bag with the end of a suspected rifle or shotgun stock visible within the bag's opening. It was immediately apparent to the officer, who was standing outside the vehicle, that the object, which was resting against the driver's seat, was a firearm. The weapon was seized and defendant was arrested.

In testimony the trial court deemed credible, the officer provided the account above during the hearing on defendant's motion to suppress the weapon, which the court correctly denied while relying primarily on the plain-view exception to the warrant requirement. Defendant now appeals that decision, essentially arguing that the plain-view observation of the firearm from outside the vehicle did not justify the officer's subsequent entry into the vehicle to seize it without a warrant. He mistakenly relies on this position despite well-settled precedent to the contrary concerning the plain-view doctrine and its application to seizures from vehicles, which constitutionally hold a diminished expectation of privacy as compared to one's home. The illegal weapon was observed in plain view and lawfully seized. This Court should therefore affirm.

COUNTER-STATEMENT OF PROCEDURAL HISTORY

On August 4, 2021, an Ocean County Grand Jury returned Indictment No. 21-08-00972-I charging defendant, Jose M. Perez, with third-degree Unlawful Possession of a Firearm, in violation of N.J.S.A. 2C:39-5(c)(1) (Count One), third-degree Unlawful Possession of a Prohibited Weapon, in violation of N.J.S.A. 2C:39-3(b) (Count Two), and second-degree Certain Person Not to Possess Firearm, in violation of N.J.S.A. 2C:39-7(b)(1) (Count Three). (Da1 to 3).[1]

On November 12, 2021, defendant appeared before the Honorable Michael T. Collins, J.S.C., on his motion to suppress evidence, specifically a firearm recovered from his vehicle, and his motion to suppress statements he made to police. (1T). Judge Collins reserved deciding on the latter motion but denied the firearm suppression motion in a written opinion issued December 6, 2021. (Da28 to 36).

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[1] 1T refers to transcript of November 12, 2021 (motion)
2T refers to transcript of January 31, 2022 (status)
3T refers to transcript of May 10, 2023 (motion)
4T refers to transcript of June 5, 2023 (status)
5T refers to transcript of October 2, 2023 (plea)
6T refers to transcript of October 27, 2023 (sentencing)
Db refers to defendant's brief
Da refers to defendant's brief's appendix

On December 14, 2022, an Ocean County Grand Jury returned Superseding Indictment No. 22-12-02198-I charging defendant with third-degree Unlawful Possession of a Prohibited Weapon, in violation of N.J.S.A. 2C:39-3(b) (Count One), first-degree Unlawful Possession of a Shotgun with Prior NERA Conviction, in violation of N.J.S.A. 2C:39-5(c)(1) (Count Two), and second-degree Certain Person Not to Possess Firearm, in violation of N.J.S.A. 2C:39-7(b)(1) (Count Three). (Da4 to 6).

On May 10, 2023, defendant appeared before the Honorable Kimarie Rahill, J.S.C., on his motion for reconsideration of the court's prior suppression ruling. (3T). Judge Rahill granted in part and denied in part that motion in a written opinion issued June 7, 2023, suppressing with the State's concession defendant's statements to police at the scene but declining to suppress the recovered firearm. (Da56 to 66).

On October 2, 2023, pursuant to a negotiated agreement, defendant pleaded guilty to Count Three of the Superseding Indictment. (5T; Da67 to 72). On October 27, 2023, Judge Rahill sentenced defendant in accordance with that negotiated agreement to five years in prison with a five-year period of parole ineligibility. (6T; Da73 to 75). The court further imposed appropriate assessments and penalties. Ibid.

Defendant filed his Notice of Appeal with this Court on February 22, 2024. (Da76 to 78). On March 11, 2024, this Court granted defendant's motion to file that Notice of Appeal as within time. (Da79).

COUNTER-STATEMENT OF FACTS

This appeal arises from defendant's conviction for possessing a firearm that was recovered from his vehicle by police upon responding to a crash scene involving the same.

More specifically, at about 9:00 p.m. on March 10, 2021, Lakewood Township Police officers responded to a reported vehicle crash at a location on Caranetta Drive. (1T6-14 to 10-11). As Officer Brandon Burkhardt arrived, Officer Soriano was already present and speaking to defendant, who was standing outside his vehicle. Ibid.[2] Defendant had apparently struck two parked cars, rendering his vehicle inoperable in about the middle of the street. Ibid. Asked for his credentials, he provided some before looking for the rest, his insurance information, in his open trunk. Ibid. The officers also confirmed the car was disabled, asking defendant to re-enter the vehicle twice to press the gas and try to move it. (1T19-14 to 22-16). This was unsuccessful, so the officers called for a tow truck. Ibid.

Officer Burkhardt then returned to his police cruiser for a few minutes before walking back to the crashed car, where defendant was still searching his

[2] Officer Burkhardt was the only witness to testify at the suppression hearing and the record reflects no indication of Officer Soriano's first name. Additionally, Officer Burkhardt's testimony was consistent with his body worn camera video of the incident, which was played during the hearing.

trunk. (1T10-11 to 12-11). At that point, Officer Burkhardt walked around the vehicle and then directed his flashlight through the open front driver's side door window and into the car, where he saw numerous $20 bills stamped with red and black ink "Japanese or Chinese letters or symbols" on the floorboard, which he considered "a bit unusual." Ibid. He then saw a blue nylon sleeve or bag about two feet in length near the gas pedal, with the open end resting on the driver's seat. Ibid. With a "high degree of certainty," Officer Burkhardt suspected the item in the sleeve could be a firearm when he also saw a "roughly cut," "wooden oval shaped like a handle" within the opening of the sleeve, which was beside the center console and "resemble[ed] the stock of a long gun." (Ibid.; 1T33-11 to 34-3; 1T44-12 to 21).[3] Moving to the passenger side and directing his flashlight through its closed front-seat window for a view from another angle, he also asked Officer Soriano, who was still standing with defendant, to take a look, which that officer did before expressing uncertainty. (1T10-11 to 12-11).

Officer Burkhardt then asked defendant what was in the bag and whether it was a rifle. (1T12-12 to 13-21; 1T22-21 to 23-13). Defendant joined him

[3] Regarding the "roughly cut" handle or stock, the court clarified through Officer Burkardt during the suppression hearing that this reflected the weapon's modification, how the firearm had been "sawed off" at both ends to shorten both the barrel and stock. (1T53-6 to 22).

by the driver's side window, "evasive[ly]" responded, "Oh, nah," and then returned to the trunk. Ibid. Officer Burkhardt then asked whether he could check to make sure it was not a weapon and defendant mumbled somewhat indiscernibly, "It's just part of this, it's part of this right here," or, "It's just over there." Ibid. With his suspicions only further "raised," Officer Burkhardt then reached through the open window into the car, inspected the bag and saw a trigger and trigger guard, increasing the officer's confidence "from about 95 to a hundred percent" that it was a long gun. (Ibid.; 1T43:15-16). The officers at that point arrested defendant and removed the firearm from his car, where they also found a flare gun, more than $600 in what appeared to be fake $20 bills, half of a bottle of brandy, a shotgun round and other "inoperable pieces of firearms." (1T13-21 to 15-17).

Following his indictment for multiple weapons offenses, defendant moved to suppress the firearm. The trial court denied the motion. Defendant subsequently entered a negotiated agreement with the State and pleaded guilty to one count of Certain Person Not to Possess Firearm. This appeal follows.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS THE UNLAWFULLY POSSESSED FIREARM THAT POLICE OBSERVED IN PLAIN VIEW AND SEIZED FROM DEFENDANT'S CRASHED VEHICLE.

While responding to the scene of a single-vehicle crash, an officer saw through an open window of defendant's car what he believed to be a long gun resting against the driver's seat. This was immediately apparent to the officer while standing in a lawful viewing area outside the vehicle, thus establishing probable cause to justify the weapon's seizure pursuant to the plain-view exception to the warrant requirement. Two separate trial court judges thus denied defendant's suppression motion below and this Court should affirm.

In denying defendant's suppression motion, the trial court ruled the firearm recovered from defendant's vehicle admissible pursuant to the plain-view exception to the warrant requirement. (Da28 to 36). The court determined the officer was lawfully in the viewing area outside defendant's vehicle when he made reasonable use of his flashlight to observe the "nylon bag and wooden portion (the butt) of the [suspected] firearm." (Da32 to 33). In so ruling, the court noted that an officer's observation from outside a

vehicle of something inside the vehicle does not amount to a "search" in the constitutional sense, nor does the use of a flashlight. Ibid.

The court further determined it was immediately apparent to the officer that the item in the bag was a firearm. (Da33 to 36). According to the officer's suppression hearing testimony—which the court deemed credible while noting its occurrence under "vigorous" cross-examination—he saw the roughly cut wooden oval, the end of an apparent rifle or shotgun stock, visible at the opening of the nylon bag, which was two feet long, all of which enhanced his suspicions with a "high degree of certainty" that the bag contained a gun. (Da35). The item was also leaning against the driver's seat and easily accessible to defendant. Ibid. The court further reasoned that the counterfeit money observed on the car's floor and defendant's evasive answers regarding the bag's contents had only enhanced the officer's suspicions. Ibid.

Relying predominantly on State v. Reininger, 430 N.J. Super. 517 (App. Div. 2013) (declining to suppress nylon firearm cases seized after observance in plain view in vehicle's backseat), the court concluded that the outward appearance of the nylon bag, the officer's observations of the firearm and defendant's responses altogether established probable cause for the officer to reach into the vehicle to seize the weapon, which was therefore admissible. (Da34 to 36). Although defendant had also filed a motion to suppress

statements he made to police, the court at the time only addressed the motion concerning the firearm. (Ibid.; 1T46-1 to 49-14).

Defendant subsequently moved for reconsideration when the matter was transferred to a different judge, and mainly on the basis that the suppression court's decision had relied in part on statements he made at the scene that should have been suppressed because he had not yet received any Miranda warnings. (Da56 to 66). On reconsideration, the court first acknowledged and granted the pending motion to suppress the statements, with the prosecutor conceding they had occurred in violation of defendant's Miranda rights and would be inadmissible as part of the State's case-in-chief at trial. (Da60 to 61; see also 3T3-23 to 4-14).[4] Despite the prior court's decision that relied partly on those statements—defendant's "evasive" responses—in ruling the officers had probable cause to reach into the vehicle to confirm and seize the contents of the nylon bag, the reconsideration court nevertheless agreed with the prior analysis in denying defendant's motion and again found probable cause existed

[4] The reasoning for this concession is unclear, given the record's plain indication that this was not a custodial setting requiring the issuance of Miranda warnings. It was not a traffic stop and defendant was not being detained, but rather assisted, by police at the scene of a vehicular crash when he made the suspicious or "evasive" statements, particularly those in response to questions about the firearm. At any rate, the State is not cross-appealing this ruling.

to seize the firearm—pursuant to the plain-view exception—even without factoring in anything that defendant may have said at the scene. (Da65 to 66).

As did the prior judge, the court determined the officer to have been lawfully in the viewing area outside the vehicle when he saw the nylon bag and the exposed stock of the firearm inside. (Da63 to 64). The court further found that it would have been immediately apparent to the officer that the item in plain view was "evidence of a crime, contraband, or otherwise subject to seizure" essentially for the same reasons as the prior judge. (Da65 to 66). The court likewise referred to Reininger, "where the outward appearance of nylon cases supported a reasonable belief that they contained firearms 'that were easily accessible to defendant.'" (Da66 (quoting Reininger, 430 N.J. Super. at 535)). The court thus concluded that "the outward appearance of the nylon bag [here] as well as Officer Burkhardt's observations of the firearm itself, as the contents of the bag were partially visible, are sufficient to establish probable cause." Ibid.

An appellate court must employ a deferential or clear error standard when reviewing a motion judge's findings during a suppression hearing. State v. Elders, 192 N.J. 224, 243 (2007). The reviewing court must uphold the factual findings underlying the trial court's decision so long as those findings are "supported by sufficient credible evidence in the record." Ibid. (citing

State v. Locurto, 157 N.J. 463, 474 (1999)). In that respect, the reviewing court should defer to the findings of a trial judge that are "substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Elders, 192 N.J. at 244 (citation omitted). As such, that court must not engage in any independent assessment of the evidence, Locurto, 157 N.J. at 471, or conclusions regarding witness credibility, State v. Barone, 147 N.J. 599, 615 (1997). And that court can only reverse if the trial court's findings "are so clearly mistaken that the interests of justice demand intervention and correction." Elders, 192 N.J. at 244 (citation and internal quotations omitted). During the suppression hearing, the court below determined the State's witness, Officer Burkhardt, to be credible. (Da33).[5]

"[T]he Fourth Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution protect citizens against unreasonable police searches and seizures by requiring warrants issued upon probable cause 'unless [the search] falls within one of the few well-delineated exceptions to the warrant requirement.'" Reininger, 430 N.J. Super. at 532 (quoting State v. Johnson, 171 N.J. 192, 205 (2002)) (additional citation

[5] Referring to the officer, the trial court found that he "maintained good eye contact while being questioned," "was forthright in his answers on both direct and cross examination" and "was not evasive." (Da33).

omitted). Those provisions thus impose a standard of reasonableness on the exercise of discretion by government officials to protect persons against arbitrary invasions. State v. Davila, 203 N.J. 97, 111 (2010). In assessing a contested search or seizure, a court should therefore measure the totality of the circumstances against that standard of reasonableness, as "'[t]he main test always remains whether the law enforcement officer has acted in an objectively reasonable manner,'" Reininger, 430 N.J. Super. at 533 (quoting State v. Jones, 143 N.J. 4, 19-20 (1995)), "without regard to [the officer's] underlying motives or intent," State v. Gonzales, 227 N.J. 77, 96 (2016) (quoting State v. Bruzzese, 94 N.J. 210, 219 (1983)).

Although a warrantless search or seizure is presumed to be unreasonable and thus invalid, the State may establish reasonableness and, in turn, validity when proving by a preponderance of the evidence that the search or seizure falls within one of the well-delineated exceptions to the warrant requirement. Elders, 192 N.J. at 246 (citation and internal quotations omitted). One such exception arises from the plain-view doctrine, which "authorizes a police officer to seize evidence or contraband that is in plain view." Gonzales, 227 N.J. at 90. The exception's rationale acknowledges the common-sense notion that "a police officer lawfully in the viewing area need not close his eyes to suspicious evidence in plain view." Reininger, 430 N.J. Super. at 535 (quoting

Bruzzese, 94 N.J. at 237) (internal quotations omitted). The exception's application as such holds two requirements, that (one) "the officer must lawfully be in the area where he observed and seized the incriminating item or contraband, and [(two)] it must be immediately apparent that the seized item is evidence of a crime." Gonzales, 227 N.J. at 101.

With regard to the "immediately apparent" requirement, "in order to seize evidence in plain view a police officer must have probable cause to associate the [item] with criminal activity." State v. Mann, 203 N.J. 328, 341 (2010) (quoting Bruzzese, 94 N.J. at 237) (internal quotations omitted). That is, there must simply be a "practical, nontechnical probability that incriminating evidence is involved." Bruzzese, 94 N.J. at 237 (citation and internal quotations omitted).

Defendant concedes that Officer Burkhardt was lawfully in the viewing area, standing outside defendant's vehicle, when he observed the suspected firearm inside, (Db14), that is, when the officer developed a "high degree of certainty" by "about 95" percent that he was looking at an illegal weapon, (see 1T43-15 to 16; 1T44-12 to 21). But defendant nevertheless asserts that the resulting probable cause did not justify the weapon's seizure from inside, from within the vehicle's constitutionally protected space, without a warrant. He argues that the plain-view doctrine's "lawfully present" prong requires both

that the officer lawfully be in the area where he observes the incriminating item and "that the officer must already be lawfully present in the seizing area" to seize it. (Db20 to 21). In so arguing, however, defendant mistakenly relies on cases mainly involving residences, a garage or backyard. See, e.g., Horton v. California, 496 U.S. 128 (1990) (involving weapons evidence seized from defendant's home after observed in plain view during warrant execution); State v. Mellody, 479 N.J. Super. 90 (App. Div. 2024) (despite officer's plain-view observation from the street, finding unlawful the warrantless entry by that officer into defendant's open garage to arrest or seize her, noting "[w]hile an open door may . . . expose to 'plain view' certain contents of a garage, even then, police may not enter the garage based solely on the plain view observation of contraband inside"); State v. Pineiro, 369 N.J. Super. 65 (App. Div. 2004) (involving seizure of stolen computer observed in plain view after defendant allowed officers into his apartment); State v. Herron, 153 N.J. Super. 570 (App. Div. 1977) (suppressing narcotics evidence seized without warrant from a backyard after plain-view observation made from outside the property).

In that sense, defendant simply ignores the settled precedent concerning the "diminished expectation of privacy that attends car ownership and use," an expectation "significantly less than that relating to one's home or office." State v. Reldan, 100 N.J. 187, 197 (1985) (citations omitted). Courts have

explained the distinction, noting "'the pervasive regulation of vehicles, capable of traveling on the public highway' and that '[t]he public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation.'" Id. at 197 (quoting California v. Carney, 471 U.S. 386, 392 (1985)). To be sure, this "lowered" expectation of privacy would not "excuse an excessively or patently intrusive search that goes well beyond the ambit of the underlying probable cause," but it is a factor that bears on the reasonableness of such warrantless searches when based on probable cause. Id. at 198 (citation omitted).[6]

Various cases conform with such reasoning in declining to suppress evidence observed by police in plain view within vehicles and then seized based on the probable cause generated by those observations. For example, in Reininger, while conducting a field inquiry of a man found asleep in the driver's seat of a van in a parking lot, an officer directed his flashlight inside

[6] This rationale similarly underlies the automobile exception to the warrant requirement, which allows police to conduct a warrantless roadside search of a vehicle if they have probable cause to believe it contains contraband or evidence of a crime. See State v. Witt, 223 N.J. 409, 450 (2015) (dispensing with additional requirement of exigent circumstances to justify warrantless roadside vehicle search when probable cause "arising from unforeseeable and spontaneous circumstances" exists). Notably here, the officer did not even go so far as to conduct a search before finding defendant's firearm, he merely observed it in plain view from outside the vehicle before seizing and securing the weapon.

and observed two nylon firearm cases on the back seat. 430 N.J. Super. at 526. The officer then opened the back door and removed them "for safety reasons." Id. at 527. Given the officer's "plain view discovery of the firearm cases on the back seat," this Court considered the "limited" seizure that followed valid under the plain-view exception. Id. at 535-36.

Similarly, in State v. Mai, while responding to the report of a man publicly waving a gun, officers received a separate call concerning a double-parked van with multiple men around it. 202 N.J. 12, 16 (2010). Upon locating the van, the officers observed numerous men around and inside the vehicle, conducted an investigatory stop, opened the vehicle's side sliding door and saw an individual inside, the defendant, who matched the description of the person initially reported waving the gun. Ibid. As that defendant then exited the van at the officers' instruction (given their articulable suspicion that a crime had been committed), the officers observed in plain view on the vehicle's floor a gun, which they immediately seized. Ibid. Finding no issue with the officers' conduct, the Court determined that "once defendant was properly removed from the van, the seizure of the loaded gun from the floor of the van was proper under the 'plain view' doctrine." Mai, 202 N.J. at 25 (citations omitted).

And likewise, in Mann, officers apprehended the defendant for narcotics offenses after following him from his vehicle into a restaurant. 203 N.J. at 328. When one of the officers then returned to the defendant's car to question its other occupants, from outside of the vehicle, the officer observed through the window several bags of suspected narcotics in the backseat area that he immediately seized. Ibid. The Court again found the warrantless seizure of the contraband from inside the vehicle valid under the plain-view exception, reasoning that the officer "was lawfully in the viewing area [outside the vehicle] and, when he observed the drugs [inside the vehicle], he had probable cause to associate the bags of suspected drugs with criminal activity." Mann, 203 N.J. at 341.

The one warrantless vehicular-search case on which defendant does rely, State v. Johnson, 476 N.J. Super. 1 (2023), is inapposite. In that case, which primarily involved the registration-search exception to the warrant requirement, an officer detained a driver during a traffic stop and then entered the vehicle to locate its registration and confirm its ownership. Inside, the officer instead discovered on the floor narcotics, which he seized. But because the officer had failed to provide the driver a "meaningful opportunity" to locate the documentation before entering and conducting a limited search of the vehicle, this Court found the registration-search exception inapplicable.

Johnson, 476 N.J. Super. at 21. And because the officer was therefore not lawfully inside the vehicle when he observed the narcotics, the plain-view exception likewise did not apply concerning that evidence. Id. at 14-15.

Defendant quotes dicta from that decision, noting how "the plain view exception does not authorize police to cross the threshold of a constitutionally protected place" and that the "exception presupposes the officer is already lawfully present within the premises—or vehicle—at the moment the observation is made." (Db17 (quoting Johnson, 476 N.J. Super. at 20-21)). Again, this overlooks the above-cited precedent, the diminished expectation of privacy afforded to vehicles, and that, unlike in Johnson, the officer here was undisputedly in a lawful viewing area outside defendant's vehicle when he observed the illegal firearm inside. The seizure of that weapon that followed was therefore properly based on probable cause and thus, as the trial court correctly ruled, fully justified and valid.

In that respect, despite defendant's suggestions to the contrary, the officer did not just "enter the car and search the blue bag," nor did he "enter the constitutionally protected space of the car to search the bag and seize the gun." (Db19; Db21). Prior to entering the car and without even initiating a search, Officer Burkhardt had already observed the weapon in plain sight while standing outside the vehicle, at which point he developed his 95-percent

certainty that he was looking at an illegal weapon and, in turn, the probable cause to seize and secure it. Needless to say, the circumstances confronting the officer—given that he had just observed a suspected firearm in the vehicle, a tow truck was on its way presumably to transport that vehicle from the blocked roadway to a third-party location, and that defendant was not in custody and had been moving freely in and out of and around the car—could just as easily have justified a limited search or protective sweep of the vehicle anyway, and based on a lower threshold of mere reasonable suspicion. See State v. Gamble, 218 N.J. 412, 431-32 (2014) (an officer "may conduct a protective frisk of the passenger compartment if he has a reasonable suspicion that the [occupant] is dangerous and may gain immediate access to weapons"); see also State v. Robinson, 228 N.J. 529 (2017) (discussing community caretaking doctrine as justifying warrantless searches involving some exigent or emergent circumstances given responsibility of police to assist and ensure well-being of the public).

To the extent that defendant further alternatively asserts that even if the plain-view doctrine applied, the officer lacked a sufficient basis to satisfy the "immediately apparent" prong, he appears to suggest that a probable cause belief must somehow find its support in 100-percent certainty. (Db25). Again, he is mistaken in that suggestion and in his repeated description of the officer

relying on merely a "hunch" before reaching into the vehicle for the weapon in the bag. Ibid. For one, the probable cause standard—the "practical, nontechnical probability that incriminating evidence is involved"—has never been interpreted to require an officer's 100-percent certainty. See Bruzzese, 94 N.J. at 237. And more specifically, as the trial court determined below, Officer Burkhardt credibly testified as to his high degree of certainty that he saw a firearm in defendant's vehicle, that although he was not 100-percent sure until he reached in, moved the bag and saw the trigger, he was nevertheless 95-percent sure even before doing so that it was a gun.

In short, from outside defendant's vehicle, police observed in plain sight the illegal firearm inside and thereby possessed the probable cause to lawfully seize and secure the weapon pursuant to the plain-view doctrine. The trial court correctly denied defendant's suppression motion while determining that evidence to be admissible and this Court should affirm.

CONCLUSION

Based on the foregoing, the State urges this Court to affirm the trial court's decision below.

Respectfully submitted,

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LETTER-BRIEF IN REPLY ON BEHALF OF DEFENDANT-APPELLANT JOSE PEREZ

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1845-23

STATE OF NEW JERSEY, Plaintiff-Respondent, v. JOSE PEREZ, a/k/a JOSE M. PEREZ, Defendant-Petitioner.	Criminal Action On Appeal from a Judgment of Conviction in the Superior Court of New Jersey, Law Division, Ocean County Ind. No. 22-12-2198-S Sat Below: Hon. Michael T. Collins, J.S.C. Hon. Kimarie Rahill, J.S.C. Defendant is Confined

Your Honors:

This letter-brief in reply is submitted in lieu of a formal brief. R. 2:6-2(b).

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-Appellant Jose Perez relies on the procedural history and statement of facts from his July 18, 2025, appellant brief. (Db1-12)[1]

LEGAL ARGUMENT

In response to the State's August 27, 2025, respondent brief (Sb), Mr. Perez relies on the legal arguments detailed in his appellant brief (Db13-27) and adds the following arguments in reply.

REPLY POINT

THE PLAIN VIEW DOCTRINE DID NOT AUTHORIZE THE OFFICERS' ENTRY INTO THE CAR, SEARCH OF THE BLUE BAG, AND SEIZURE OF THE GUN.

Whenever the State conducts a warrantless search or seizure, it has the burden to raise an applicable exception to the warrant requirement and prove that it applies. (Db13 (citing State v. Goldsmith, 251 N.J. 384, 398-99 (2022); State v. Bryant, 227 N.J. 60, 71 (2016))) To justify the officers' warrantless actions in this case, the State chose to rely exclusively on the plain view doctrine. (Da13-19, 41-47) So this appeal stands or falls on whether the plain

[1] The following abbreviations are used:
Db -- Perez's July 18, 2025, Brief
Da -- Appendix to Perez's July 18, 2025, Brief
Sb -- The State's August 27, 2025, Response Brief
1T -- November 12, 2021, Motion Transcript (Collins, J.S.C.)

view doctrine, on its own, permitted the officers to enter Perez's car, search the blue bag, and seize the gun. (Sb8-21; Db14-21) On that much, the parties agree.

The parties' disagreement boils down to a debate about what the plain view doctrine actually demands. In Point I.A. of his appellant brief, Perez makes a simple argument: while Patrolman Burkhardt lawfully looked through the car window, that did not give him a legal justification to enter Perez's car -- a constitutionally protected space -- and manipulate the bag and seize its contents. (Db14-21) The plain view doctrine, as detailed in State v. Gonzales, 227 N.J. 77, 101 (2016), and decades of United States Supreme Court precedent, required that the officers were already lawfully in the searching and seizing area -- in this case, inside Perez's car and the bag -- before they searched the blue bag and seized the gun. (Db15-19)

The officers could have secured a warrant or pointed to another exception to the warrant requirement. But as this Court recently explained, the plain view doctrine alone "does not authorize police to cross the threshold of a constitutionally protected place." State v. Johnson, 476 N.J. Super 1, 20-21 (App. Div. 2023) (citations omitted). Simply put, "plain view alone is never enough to justify the warrantless seizure of evidence." Coolidge v. New Hampshire, 403 U.S. 443, 468 (1971).

So the State needed to advance a separate exception to the warrant requirement in the trial court to justify the officers' entry into Perez's car to search the bag and seize the gun. See Gonzales, 227 N.J. at 104 ("Plain view, in most instances, will not be the sole justification for a seizure of evidence because police must always have a lawful reason to be in the area where the evidence is found."). But the State chose not to advance a distinct legal justification for the officers' actions, and instead relied solely on plain view. "Ultimately, then, because the plain view doctrine cannot alone justify [Patrolman] Burkhardt's intrusion into the car, his search of the bag, and the seizure of the gun, and because the State failed to raise or develop facts to support another exception to the warrant requirement that would justify those actions, the officer's warrantless search and seizure was unlawful." (Db19)

In response, the State makes three arguments. But none addresses the core of Perez's argument. Instead, the State blurs the critical distinction at the heart of this appeal: the difference between an officer's ability to see an object in plain view and his authority to enter a constitutionally protected space to search and seize the object.

First, the State points to three pre-Gonzales cases in which courts applied an outdated version of the plain view test that has since been replaced. (Sb16-18 (citing State v. Reininger, 430 N.J. Super. 517, 535-36 (App. Div.

2013); State v. Mai, 202 N.J. 12, 25 (2010); and State v. Mann, 203 N.J. 328, 341 (2010))) From 1983 until 2016, our courts applied a three-part test plain view test articulated in State v. Bruzzese, 94 N.J. 210 (1983):

> First, the police officer must be lawfully in the viewing area.
>
> Second, the officer has to discover the evidence 'inadvertently,' meaning that he did not know in advance where evidence was located nor intend beforehand to seize it.
>
> Third, it has to be 'immediately apparent' to the police that the items in plain view were evidence of a crime, contraband, or otherwise subject to seizure.
>
> [Id. at 236 (citations omitted).]

Note that Bruzzese's first prong required only that an officer "must be lawfully in the viewing area" when he first saw contraband; no mention of the eventual searching/seizing area. Ibid. So the three cases cited by the State dutifully applied the Bruzzese test, including its first prong. See Reininger, 430 N.J. Super. at 536; Mai, 202 N.J. at 25-26; Mann, 203 N.J. at 341. The parties in those cases did not litigate, and the decisions did not grapple with, whether the officers were already lawfully present in the car.

In State v. Gonzales, 227 N.J. 77 (2016), however, our Supreme Court modified the plain view test. The test now provides that, "[u]nder the plain-view doctrine, the constitutional limiting principle is that [1] the officer must

lawfully be in the area where he observed and seized the incriminating item or contraband, and [2] it must be immediately apparent that the seized item is evidence of a crime." Id. at 101 (emphasis added). The doctrine's "lawful presence" prong thus now requires that the officer must "lawfully be in the area where he . . . seized the incriminating item or contraband" -- not just the spot where he stood when he originally spotted the contraband. Ibid.

This robust "lawful presence" prong -- requiring that an officer already has a legal justification for his presence in the eventual searching/seizing location -- is consistent with over five decades of plain view decisions of the United States Supreme Court. (Db15-16 (citing cases)) This Court, too, has detailed the updated Gonzales "lawful presence" requirement in several recent cases. (Db16-18 (citing cases))

The State attempts to sidestep Gonzales and this Court's post-Gonzales cases, arguing that Perez "mistakenly relies on cases mainly involving residences, a garage or backyard." (Sb15) But the State's reliance on the "diminished expectation of privacy" in cars misses the point. (Sb15-16, Sb19) The warrant requirement still applies absent a specific exception. And there is no support for the State's argument that plain view applies differently for intrusions into cars. Indeed, this Court made explicit in Johnson that "the plain view exception presupposes the officer is already lawfully present within the

premises -- or vehicle -- at the moment the observation is made." 476 N.J. Super at 21 (citation omitted) (emphasis added). And for good reason: "a defendant's constitutional right to privacy in his vehicle and personal effects cannot be subordinated to mere considerations of convenience to the police short of substantial necessities grounded in public safety." Id. at 23 (quoting State v. Keaton, 222 N.J. 438, 450 (2015)) (cleaned up). Without a separate exception to the warrant requirement to justify the intrusion, Patrolman Burkhardt's entry into the car to search the bag was unconstitutional.

Next, the State briefly gestures at other exceptions to the warrant requirement -- including the community caretaking, protective sweep, and automobile exceptions -- suggesting that that these exceptions "could just as easily have justified" the officers' entry into the car. (Sb16 n.6, Sb20) But each of these exceptions has its own rigorous legal standard. And as the State well knows, it failed to raise these doctrines at all in the trial court, so any such arguments are waived. State v. Witt, 223 N.J. 409, 419 (2015) ("Parties must make known their positions at the suppression hearing so that the trial court can rule on the issues before it. For sound jurisprudential reasons, with few exceptions, our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available." (quotation and citation omitted)). Indeed, the State's

brief appears to accept that these arguments are waived and does not contend that these doctrines justify the officers' actions. This case depends on the application of plain view doctrine alone.

Last, the State contends that it was immediately apparent to Patrolman Burkhardt that the blue bag held a gun. (Sb20-21) The State points out that probable cause does not demand "100-perecent certainty." (Sb20-21) True enough -- but the standard is still demanding, requiring more than "a police officer's subjective hunch." (Db22-23 (quoting State v. Pineiro, 181 N.J. 13, 27 (2004)) Yet, as Perez details in his brief, Burkhardt's own testimony and actions reveal that his search was ultimately based on a guess. (Db23-26) As Burkhardt explained it, "I'd say I had a strong hunch" (1T33-11 to 34-8), and "I reached in just enough to inspect the opening to confirm or deny [my] suspicion." (1T42-21 to 43-1)

* * *

In sum, because the State relied exclusively on the plain view doctrine, and because the doctrine cannot by itself authorize an officer to intrude into a vehicle and search a bag found inside, the seizure of the firearm violated both the Fourth Amendment and Article I, Paragraph 7 of the State Constitution. And even if the plain view doctrine could apply, the State did not satisfy it here.

CONCLUSION

For the reasons set forth here and in Mr. Perez's July 18, 2025, appellant brief, this Court should reverse trial court's denial of Perez's suppression motion.

Respectfully submitted,

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Dated: September 3, 2025