SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-2603-23

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	On Appeal From a Judgment of Conviction of the
v.	:	Superior Court of New Jersey, Law Division,
DARYL M. WILLIAMS,	:	Monmouth County.
Defendant-Appellant.	:	Indictment Nos. 22-03-00400; 22-06-01009
	:	Sat Below:
	:	Hon. Jill G. O'Malley, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: February 3, 2025

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PRELIMINARY STATEMENT

Daryl Williams's conviction for unlawful possession of a firearm must be reversed because it was founded upon an unconstitutional seizure and search of a parked vehicle.

Both the United States Constitution and the New Jersey Constitution are clear: individuals have a right to be free from unreasonable searches and seizures. Police officers violate this right when they stop, detain, or search individuals without particularized suspicion. On the evening of October 2, 2021, Asbury Park Police deprived Mr. Williams of this basic right by turning their own error – mistaking the car in which Mr. Williams and others sat for that of an unrelated suspect – into an unlawful fishing expedition.

First, police seized the evidence against Mr. Williams following an unlawfully prolonged investigative detention. Specifically, while searching for a suspect who happened to be traveling in a similar-looking car, police officers converged on a parked car in which Mr. Williams was a passenger. Even after they realized their mistake and confirmed that the suspect was not in the parked car, police officers continued to detain the parked car and its passengers, and then ordered Mr. Williams's co-defendant, Tyheim McGhee, out of the car. The evidence that led to Mr. Williams's conviction was found during a subsequent search following this unlawful detention.

Second, the police lacked probable cause to search the car. While unlawfully detaining the car and its occupants, an officer saw a scale on the floor of the car when McGhee was ordered out of the vehicle. The officer was initially unsure if the scale had drug residue on it and, even after inspecting it more closely, did not know if any residue was from a controlled dangerous substance. Nevertheless, the police conducted a search of the car, even without waiting for a drug-sniffing dog that their supervisor had suggested they would need to establish probable cause for a search. During that search, the police found an unlicensed handgun, hollow point bullets, and cocaine.

Accordingly, because the seizure of evidence from the car was the direct result of the unlawfully prolonged detention and the illegal search of the vehicle, this Court should reverse the trial court's order denying the suppression motion.

PROCEDURAL HISTORY

On March 3, 2022, a Monmouth County grand jury returned Indictment No. 22-03-00400 charging defendant-appellant Daryl M. Williams and three co-defendants – Tyanna Jones, Tyheim McGhee, and Darren Spriggs[1] – with: second-degree unlawful possession of a weapon, a handgun, pursuant to N.J.S.A. 2C:39-5b (Count One); third-degree possession of a controlled dangerous substance (CDS), cocaine, pursuant to N.J.S.A. 2C:35-10a(1) (Count Two); fourth-degree possession of a prohibited weapon, hollow-point bullets, pursuant to N.J.S.A. 2C:39-3f (Count Four); and fourth-degree possession of a defaced firearm, pursuant to N.J.S.A. 2C:39-9e (Count Five). (Da 1-4)[2]

[1] Jones, McGhee, and Spriggs are not parties to this appeal. McGhee was also charged separately in the indictment with third-degree possession of CDS, heroin, pursuant to N.J.S.A. 2C:35-10a(1) (Count Three), and second-degree certain persons not to possess weapons, pursuant to N.J.S.A. 2C:39-7b(1) (Count Six).

[2] The appendix to this brief is cited as "Da _". The transcripts are cited as follows:

1T- November 29, 2022 (Suppression Hearing Transcript)
2T- December 6, 2022 (Second Suppression Hearing Transcript)
3T- February 3, 2023 (Bench Ruling on Motion to Suppress Transcript)
4T- February 27, 2023 (Plea Hearing Transcript)
5T- April 8, 2023 (Sentencing Hearing Transcript)

On October 13, 2022, Mr. Williams moved to suppress the physical evidence – the handgun, hollow-point bullets, and cocaine – that was seized pursuant to a warrantless search of a vehicle in which he was the passenger. (Da 8-9) On November 29 and December 6, 2022, Mr. Williams appeared before the Honorable Jill G. O'Malley, J.S.C., for an evidentiary hearing. (1T; 2T) On February 3, 2023, Judge O'Malley issued an opinion from the bench and denied the motion to suppress. (3T 4:16-34:13; Da 28-29)

On February 27, 2023, Mr. Williams pled guilty to Count One, second-degree unlawful possession of a weapon. He also pled guilty to third-degree possession of a CDS, as charged in Monmouth County Indictment No. 22-06-01009, a separate indictment concerning an unrelated incident. (Da 30-35; 4T 3:12-4:4, 18:16-25; see Da 5-7) In exchange for his guilty plea, the State agreed to recommend at sentencing a five-year state prison term, subject to a 42-month parole disqualifier on the weapons charge, and a concurrent three-year term for the CDS offense. The State also agreed to dismiss the remaining charges in both indictments. (Da 30-35; 4T 3:19-23)

On April 8, 2024, Mr. Williams appeared before Judge O'Malley for sentencing. (5T) Judge O'Malley sentenced Mr. Williams in accordance with the recommended sentence in the guilty plea. (Da 30-35; 5T 16:4-25) The requisite fines and penalties were imposed. (Da 30-35; 5T 16:4-25)

Through counsel, Mr. Williams filed a notice of appeal on April 30, 2024. (Da 36-39)

STATEMENT OF FACTS

The following facts are drawn from the suppression hearing and the motion record, including the body-worn camera and dashboard-mounted mobile video recorder footage ("MVR").

I. Asbury Park Police Were Searching for a Suspect Who Had No Connection to Mr. Williams or His Co-Defendants

On October 2, 2021, around 2:15 a.m., Patrolman Alexander Parisi of the Asbury Park Police Department was driving in a marked police car in the southwestern quadrant of Asbury Park. (1T 6:13-17) He saw two vehicles make what he characterized as an "abrupt turn," and he followed the vehicles – a white Kia SUV and a black Ford Mustang – both of which stopped. (1T 9:16-11:3) At this point, Parisi turned on both his body-worn camera and his MVR. (1T 11:8-10; Da 40 at 0:01; Da 41 at 0:01)

The occupants of both the white Kia SUV and the black Ford Mustang got out of their vehicles as Parisi idled in the travel lane. (1T 12:4-6; Da 41 at 0:44-0:51) Parisi immediately recognized the individual exiting the passenger side of the white Kia SUV as Daniel Mack, who he knew from previous interactions. (1T 12:15-18) Parisi knew that Mack was wanted on a warrant for eluding police in nearby Ocean Township, but did not arrest him. (1T 13:23-14:1) Instead, Parisi spoke briefly with Mack and warned him to be careful

because there had been two shootings in the area earlier that evening. (1T 14:13-25; Da 40 at 0:45-1:15; Da 41 at 0:50-1:20)

After speaking to Mack, Parisi drove away. He testified that he drove away without arresting Mack – despite knowing about the warrant from Ocean Township – because he feared for his safety without backup assistance, and he thought Mack would flee. (1T 15:1-11) He put out a call for his fellow officers to set up a perimeter to converge on Mack. (1T 14:23-16:4; Da 40 at 1:15-2:01) Parisi circled the block, but by the time he returned to the spot where he had spoken to Mack, both the white Kia SUV and the black Ford Mustang were gone. (1T 16:5-12; Da 40 at 1:15-4:15; Da 41 at 1:21-4:07) No other officers saw the vehicles leave or knew where they had gone. (1T 16:16-19)

II. Asbury Park Police Misidentified Defendants' White Kia SUV as Their Suspect's Car

Parisi next drove toward a housing complex known as "Asbury Park Village," which was a short distance away at 2 Atkins Avenue in Asbury Park. (1T 17:5-12, 47:5-9; Da 41 at 4:20-6:20) He testified that he knew Mack to frequent that area and believed he would find him there. (1T 17:5-12, 47:5-9)

Asbury Park Village comprises several row-style houses, with two parking lots. Adams Street runs perpendicular to the two parking lots. (See Da 41 at 6:21-6:52) Parisi drove past the second parking lot entrance on Adams Street, stopped, reversed past the entrance, and made a right turn into

the parking lot. (Da 41 at 6:42-7:20) Parisi testified that he did so because he saw a white Kia SUV, which he erroneously believed was the same car in which he had just seen Mack. (1T 18:4-10, 18:23-19:1; 2T 24:24-25:3) The MVR footage shows that the car in which Parisi saw Mack was a different model from the car parked in Asbury Park Village. (Compare Da 41 at 0:41 to Da 41 at 7:54) The white Kia SUV parked in Asbury Park Village was a "Sorento" model Kia (the model of Mack's Kia was not established on the record). (2T 20:20-25)

The parking lot Parisi entered is wide enough to accommodate two lanes of travel (ingress and egress), with perpendicular parking spots on both sides. (Da 41 at 7:21-7:30) The MVR footage shows that the entrance from Adams Street is the only way for vehicles to enter or exit the parking lot, and the other end of the parking lot ends in a dead end. (Da 41 at 7:25-7:31) The white Kia Sorento was parked nose-in, approximately eight spots in from the sole entrance to the parking lot from Adams Street. Several vehicles were parked next to the Kia – between the entrance and the spot where the Kia was parked – and in the spots on the other side of the travel lanes, including a large van. (Da 41 at 7:16-7:22; 2T 94:24-95:5)

Parisi testified that, as he drove into the parking lot and past the white Kia Sorento, he saw "a lot of movement in the back seats" and "silhouettes

shifting towards the center, looking back" towards him, but he could not make out who was in the car because of the window tint. (1T 18:16-20, 48:12-18; 2T 94:24-96:1) The movement Parisi described is not visible on either the dashboard camera video or Parisi's body-worn camera video. (See Da 41 at 7:20-7:31; Da 40 at 7:17-7:27) After passing behind the Kia, Parisi made a K-turn, and positioned his car at a diagonal angle facing the rear passenger side of the Kia, with his headlights shining on the vehicle. (Da 41 at 7:23-7:54; 2T 96:2-8) As he was parking, he said into his radio, "I've got the vehicle, AP Village. Send a unit. Right here right here." (Da 40 at 7:40-7:44; Da 41 at 7:43-7:47) Parisi testified that the words "right here right here" were directed to another police officer, Officer Pettway, who he knew to be in a cruiser in the immediate vicinity of the parking lot, on Adams Street. (2T 27:1-14, 28:11-25)

Parisi immediately got out of his patrol car. At the same time, Pettway pulled into the parking lot, parked, and got out of his patrol car. (Da 40 at 7:50-7:53; Da 41 at 7:55-7:58.) Pettway parked at a diagonal angle to the rear driver's side of the white Kia Sorento, on the opposite side from Parisi's vehicle, straddling the two travel lanes leading toward the sole exit from the parking lot. (Da 41 at 7:55-7:57; see 2T 97:14-17) Parisi acknowledged that if the Kia had backed out of its parking spot, Parisi's car would have been to the

right and Pettway's car would have been to the left, (2T 27:15-20), but he nevertheless maintained that the car "could have maneuvered around the vehicles" to leave. (2T 97:23-98:3)

Parisi and Pettway approached the white Kia Sorento simultaneously, with Parisi on the passenger side and Pettway on the driver's side. (Da 40 at 7:55-8:03; Da 41 at 7:58-8:06) Parisi testified that as he approached the Kia he "could see movement in the back." (1T 19:25-20:2) Specifically, he testified that he "could see the rear seat passenger shifting forward, looking back at me." (1T 20:2-3) He characterized the movements as the rear seat passenger "jerking" forward as he was approaching. (1T 22:11-16; 2T 109:2-12) He did not, however, witness any vehicle infraction or see any crime being committed. (2T 32:15-33:12)

The front-seat passenger, Tyanna Jones, put down her window as Parisi approached. Parisi turned on his flashlight as he was walking up to speak to the occupants. (Da 41 at 8:00) Parisi testified that he immediately identified the driver as Darren Spriggs. (2T 98:25-99:10) Through the open front passenger window, Parisi said "no sleeping in the car or anything like that." At the same time, Officer Pettway was on the other side of the car, shining his light directly into the rear driver's side window. (Da 40 at 8:01-8:06)

Seconds after his initial approach, Parisi shined his light through the rear passenger-side window. (Da 40 at 8:05; Da 41 at 8:08) Mr. Williams was in the rear driver-side seat, where Pettway stood, and Tyheim McGhee was in the rear passenger-side seat, on Parisi's side of the car. Parisi testified that he knew both men by sight. (2T 99:11-13) At that moment Parisi could see all occupants of the car, and he recognized all three men and knew none of them was Daniel Mack. (2T 98:25-101:3, 101:16-18, 108:19-109:1) There is no evidence in the record that there was any connection between the occupants of the white Kia Sorento and Daniel Mack, and neither Parisi nor any other officer inquired about Mack at any point. Further, as the court noted during the suppression hearing, Parisi did not testify that he believed there was any connection between the white Kia Sorento and the shootings that had occurred earlier that evening. (2T 47:16-48:17)

III. After Learning That They Had Approached the Wrong Vehicle, Officers Continued to Detain Mr. Williams and the Others

Even though Parisi knew Mack was not there, he ordered McGhee to step out of the car. (Da 40 at 8:22-8:27) McGhee opened the door and, with the door open and Parisi observing, bent over with his hands towards his feet. On video, McGhee said he needed to "get his shoes on," but Parisi denied having heard this. (Da 40 at 8:27-8:29; 2T 51:14-19) After about 15 seconds, McGhee stepped out of the car. (Da 40 at 8:43; Da 41 at 8:47)

Parisi testified that he ordered McGhee to get out of the car because of the movement he had observed in the vehicle since his initial approach. (2T 50:21-51:5) The body-worn camera footage shows the following movements:

- When Parisi was first speaking to the occupants in the front seats, Mr. Williams can be seen leaning forward from the rear driver-side seat, apparently to better hear what Parisi is saying, as only the front window was open.
- Mr. Williams then turned toward Pettway, who was shining a light through the rear driver-side window. He looked towards Pettway's car and rolled down his window, apparently to speak to Pettway.
- McGhee leaned forward to gesture to Parisi in response to Parisi's questions about why they were sitting in the parked car.
- McGhee turned briefly towards Mr. Williams, apparently to hand him a cigarette-shaped object.

(Da 40 at 8:00-8:25)

Parisi testified that after McGhee stepped out of the car he saw a scale in the center of the rear passenger floor. (1T 27:21-28:13; 2T 125:13-16) No scale is visible in the body-worn camera or MVR footage.

Parisi spoke to McGhee for almost a minute and then patted him down but did not find anything. (Da 40 at 8:44-9:42; Da 41 at 8:47-9:45) During Parisi's conversation with McGhee, two additional police cars arrived at the scene. Both parked behind Pettway's car, and three additional officers got out and joined the scene at the white Kia Sorento. (Da 41 at 9:22-9:49)

IV. Parisi Informed His Supervisor That He Was Unsure Whether the Scale He Observed Had Residue On It

Even though Parisi found nothing during his pat down of McGhee, (1T 26:17-23; Da 40 at 9:40-10:03), Pettway ordered both Mr. Williams and Spriggs, the driver, to exit the car. (1T 26:17-23, 27:6-12; Da 40 at 10:13-10:15, 10:39-10:42) Officers then patted both of them down and did not find anything – no weapons or contraband. (1T 27:6-12; Da 40 at 11:04-11:36, 12:09-12:26)

Parisi then went back to his squad car and called the on-duty sergeant, Sergeant Carrasquillo. Their conversation is audible in the body-worn camera footage. Parisi explained that he had mistaken the detained car (with Mr. Williams and the other occupants) for the car in which he had seen Mack, stating "ironically it's the same type of car but it's a different car; this one's got a bunch of Hoover boys in it" – referring to the Hoover set of the Crips gang.[3] He said the occupants of the car were "moving around and shit" when they saw Parisi's car; that "these are gun guys here"; and that he saw a scale on the floor on which "it looks like there might be some type of residue or

[3] At the suppression hearing, the State failed to establish a basis for Parisi's claim that the individuals in the Kia were affiliated with a gang. (See 2T 119:3-11, 122:19-125:3) The motion court did not mention or rely on any purported gang affiliation in its opinion denying the motion to suppress. (See generally 3T).

something." (Da 40 at 13:47-14:22; Da 41 at 13:50-14:28; see also 2T 72:25-73:24)

Parisi asked for guidance from Sergeant Carrasquillo about how to proceed. Carrasquillo said, "What type of residue? If its marijuana we don't do that." Carrasquillo added that unless Parisi could see something else to bolster probable cause "like small rocks, white residue on the scale, baggy or something else" Parisi did not "have much." Parisi responded that he was going to take a look at the scale because "it looks like it might have some kind of white substance on it." Carrasquillo responded, "if so . . . you can get a dog for that." (Da 40 at 14:22-15:08; see also 2T 73:24-74:22)

V. Despite the Instruction from His Sergeant, Parisi Seized the Scale and Ordered a Search of the Car

Notwithstanding the guidance from Sergeant Carrasquillo, Parisi returned to the white Kia, opened the door, and pulled out the scale. (Da 40 15:20-15:45; Da 41 at 15:21-15:48; 2T 79:9-15) He testified that once he retrieved the scale he could see "white powder residue on it," which based on his experience and knowledge, he claimed "was consistent with powder cocaine residue." (1T 28:6-9) Parisi asked McGhee about the residue on the scale and McGhee responded that he used it to weigh marijuana. (Da 40 15:46-17:15; 2T 69:13-20, 79:16-80:10)

Parisi took the scale back to his squad car and called Sergeant Carrasquillo again. He reported that the scale had "specks of white residue on it" and asked, "what do you think . . . as far as PC for coke in the car?" Carrasquillo suggested that Parisi call for a drug-sniffing dog, and Parisi responded that he would "check it out." (Da 41 at 17:51-18:44; 2T 85:3-6.)

Parisi inquired about getting a drug-sniffing dog to the scene, but the dispatcher told him no dog was immediately available. (1T 51:19-52:6) After approximately three minutes, Parisi said to Pettway, "I think there's something else in the car. . . . . Gabe [Carrasquillo] for some reason . . . wants me to friggin' get a dog. But to be honest with you, [I've] got paraphernalia, I'm just going to search it." (2T 86:8-23; Da 40 21:41-21:58)

Parisi and another officer, Officer Ritter, then searched the car. During the search, the officers found a handgun under the front passenger seat and crack cocaine. (1T 29:19-30:3, 31:9-11; 2T 86:25)

VI. Mr. Williams's Motion to Suppress Evidence

In support of his motion to suppress the gun and drugs seized from the car, Mr. Williams argued in his brief that the occupants of the Kia Sorento were detained when Parisi and Pettway approached the vehicle, and that the detention should have ended when Parisi realized Mack was not present. He further argued that the allegedly "furtive" movements were natural physical

responses to the approach of police officers, and were insufficient to provide reasonable suspicion that would support the order for McGhee to step out of the car, even when paired with the lateness of the hour and the allegedly "high-crime" character of the neighborhood. (Da 19-27)

The State argued in its brief that Parisi needed only to articulate a heightened caution for his safety to justify the order for McGhee to step out of the car, but conceded that the pat-down required an articulable and reasonable suspicion. The State argued that, together, the "furtive" movements Parisi observed, the fact that there had been recent shootings nearby (including that night), and the alleged (but contested) fact that all male occupants of the car were gang members gave him a reasonable fear for his safety that justified both the order for McGhee to exit the car and the protective pat-down. The State further argued that the officer's plain-view observation of the scale – which the State characterized as drug paraphernalia – gave rise to probable cause to search the car. (Da 10-18)

The motion court issued an oral opinion denying the motion to suppress, without hearing oral argument on the motion. (See generally 3T) First, the court held that Parisi's initial approach amounted to a field inquiry because Parisi testified he was not initiating a motor vehicle stop, his lights and sirens were off, and he parked in a manner that allowed an avenue of egress.

(3T 22:1-18) The court found that the encounter became an investigative stop when Parisi asked McGhee to step out of the car, which was justified by reasonable suspicion based on defendants' "furtive" movements, and the fact that Parisi and Pettway were "outnumbered" and in a dangerous area, not far from the shootings that had occurred earlier that evening. (3T 24:8-13, 25:21-27:6) The court went on to hold that a police officer in those circumstances does not need a reasonable suspicion that defendants are armed and dangerous to order a passenger out of the car, but must merely point to "some fact or facts" that would create a heightened awareness of danger. (3T 29:17-24) The court found that the same facts supporting the investigative detention met this standard. (3T 29:25-30:8) Finally, the court found that once McGhee stepped out of the car and Parisi spotted the scale on the floor with white residue, the officers had probable cause to search the vehicle. (3T 31:16-21)

LEGAL ARGUMENT

POINT I

BECAUSE THE SEIZURE OF THE EVIDENCE FROM THE VEHICLE WAS THE DIRECT RESULT OF AN UNLAWFULLY PROLONGED INVESTIGATIVE DETENTION AND ILLEGAL SEARCH, THE EVIDENCE SHOULD HAVE BEEN SUPPRESSED. (Da 28-29; 3T 4:16-34:13)

The motion court erred when it determined that (1) the officers' initial approach of the Kia Sorento was a lawful field inquiry that only transformed into a lawful investigative detention once Parisi asked McGhee to step out of the car; (2) McGhee's removal from the vehicle was justified by reasonable suspicion and facts that created a heightened awareness of danger; and (3) the plain-view observation of the scale on the floor of the vehicle provided probable cause for the car search.

First, the stop was unconstitutional because officers needed – but did not have – reasonable and articulable suspicion throughout the entire interaction with Mr. Williams and his co-defendants: (1) the stop of the white Kia Sorento was a detention from the start; (2) failing to discontinue the stop after learning Mack was not present unconstitutionally prolonged the stop; (3) neither the alleged "furtive" movements nor any other factor supplied an independent basis for reasonable suspicion to prolong the stop or order McGhee out of the

car; and (4) Parisi needed reasonable suspicion, beyond a mere heightened awareness of danger, to justify the order for McGhee to step out of the car.

Second, Parisi lacked probable cause to seize the scale and search the vehicle based on his statements that he could not tell whether or what kind of residue was on the scale. Indeed, that is the guidance Parisi received from his sergeant prior to the search and seizure, but he went ahead anyway. He did so despite the fact that multiple officers were on the scene, the white Kia had nowhere to go, and Mr. Williams and the others posed no threat.

Thus, because the evidence seized from the car was the direct result of the unlawfully prolonged detention and the illegal search of the vehicle, this Court should reverse the trial court's order denying the suppression motion. U.S. Const. amends. IV, XIV; N.J. Const. art. I, para. 7.

A. Officers Detained the White Kia Sorento Looking for Daniel Mack and, Once They Discovered He Was Not Present, Lacked Reasonable Suspicion to Prolong the Detention and Order a Passenger Out of The Vehicle

The Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution protect individuals against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. I, para. 7. "People, generally, are free to go on their way without interference from the government. That is, after all, the essence of the Fourth Amendment – the police may not randomly stop and detain persons without

particularized suspicion." State v. Chisum, 236 N.J. 530, 545 (2019) (quoting State v. Shaw, 213 N.J. 398, 409 (2012)). "[T]he State bears the burden of proving by a preponderance of the evidence that a warrantless search or seizure falls within one of the few well-delineated exceptions to the warrant requirement." Id. (quoting State v. Mann, 203 N.J. 328, 337-38 (2010)).

1. The Occupants of the White Kia Were Detained From the Moment Officers Obstructed Their Exit From The Parking Lot

The motion court erred in concluding that the interaction between the occupants in the white Kia and Officers Parisi and Pettway started as a field inquiry, as opposed to an investigative detention. Accordingly, the court failed to properly assess whether the initial interaction and the extension of that interaction after Parisi realized he had the wrong vehicle were supported by reasonable suspicion.

An investigative detention "occurs during a police encounter when 'an objectively reasonable person' would feel 'that his or her right to move has been restricted.'" State v. Rosario, 229 N.J. 263, 272 (2017) (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). "Because an investigative detention is a temporary seizure that restricts a person's movement, it must be based on an officer's 'reasonable and particularized suspicion . . . that an individual has just engaged in, or was about to engage in, criminal activity.'" Id. at 272

(alteration in original) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). A "field inquiry," by contrast, does not require reasonable and articulable suspicion. Id. In assessing police encounters, "[t]he difference between a field inquiry and an investigative detention always comes down to whether an objectively reasonable person would have felt free to leave or to terminate the encounter with police." Id. at 273. Finally, "the encounter is measured from a defendant's perspective." Id.

In Rosario, the defendant was lawfully parked in the parking lot of an apartment building when a police officer parked his cruiser seven to ten feet behind her, blocking her in, and shone his light on her car. Id. at 268, 273. The New Jersey Supreme Court determined this was an investigative detention, because:

> A person sitting in a lawfully parked car outside her home who suddenly finds herself blocked in by a patrol car that shines a flood light into the vehicle, only to have the officer exit his marked car and approach the driver's side of the vehicle, would not reasonably feel free to leave. . . . [S]uch police activity reasonably would, and should, prompt a person to think that she must stay put and submit to whatever interaction with the police officer was about to come.

Id. at 273.

The facts here are strikingly similar to Rosario: the parking lot in which Mr. Williams and the others were lawfully parked had a single exit; Parisi

parked behind the car, to one side, with his headlights trained on the parked car; as Parisi exited his car, a second squad car (driven by Officer Pettway) pulled up on the other side of the parked Kia Sorento and blocked the sole exit from the parking lot; with the exit effectively blocked, both officers immediately approached and stood on both sides of the car, shining flashlights in the faces of the occupants; and Parisi opened with an accusatory demand, warning the occupants "no sleeping in the car" despite the fact that they were clearly not sleeping.

As in Rosario, this sort of "police activity reasonably would, and should, prompt a person to think that she must stay put and submit to whatever interaction with the police officer was about to come." Id. It would have been irresponsible and dangerous for all involved if Spriggs (the driver) had tried to drive away, given Parisi and Pettway's objectively manifested intent to have the car stay put.

The motion court erroneously found otherwise because it (1) improperly relied on Parisi's view of whether the defendants were free to leave, and (2) failed to acknowledge or account for the fact that Pettway's car blocked the only avenue of egress, despite this fact being clear from the MVR footage in the record.

First, the motion court credited Parisi's testimony that "the occupants of the Kia were free to leave because he did not know if Mack was in the car." (3T 22:11-13) But Parisi's subjective view is irrelevant because "[t]he encounter is measured from [the] defendant's perspective." Rosario, 229 N.J. at 273; see also Rodriguez, 172 N.J. at 126 ("Neither the officer's subjective intent nor the subjective belief of the citizen determines whether a seizure has occurred." (citations omitted)). In any case, Parisi clearly believed that Mack was in the car, and – given that he had just raced to the scene to prevent Mack from eluding him – it is simply not credible that Parisi would have just permitted the white Kia to drive away.

Second, the motion court found it was relevant that "Officer Parisi pulled past the Kia, allowing an avenue of egress should the Kia choose to leave." (3T 22:16-18) But the court ignored the fact that immediately after Parisi parked, the "avenue of egress" he purportedly left open was almost immediately blocked by Officer Pettway's arriving vehicle.

In short, it was clear that Mr. Williams and the other passengers in the white Kia were not free to leave – and, relevant here, no reasonable defendant in their position would have believed they were free to leave. Parisi and Pettway surrounded the car and detained Mr. Williams and the others so they could conduct an investigative detention. They continued the detention despite

quickly realizing that the person they were looking for was not in the vehicle and that they were inspecting the wrong car. At that point, the detention was in aid of an investigation searching for a basis.

2. Parisi Lacked a Valid Basis to Prolong the Detention Once He Knew Daniel Mack Was Not in the Car

Parisi's detention of Mr. Williams and the other occupants of the white Kia Sorento after he determined Mack was not present violated their Fourth Amendment rights.

In the context of an investigative detention, "police officers 'must use the least intrusive means necessary to effectuate the purpose of the investigative detention, and the detention must last no longer than is necessary to effectuate the purpose of the stop.'" Chisum, 236 N.J. at 547 (quoting State v. Coles, 218 N.J. 322, 344 (2014)). "[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." Id. at 547 (quoting Rodriguez v. United States, 575 U.S. 348, 350 (2015)); see also State v. Williams, 254 N.J. 8, 41 (2023) ("As the Supreme Court has noted, the Fourth Amendment does not allow motor vehicle stops to be unduly prolonged.").

The body-worn camera footage shows that, upon Parisi's approach to the car, mere seconds passed before he shone his light on the faces of the backseat passengers. At that point, he testified, he knew Mack was not in the car. Thus,

the sole legitimate basis for his approach – his mistaken belief that this was the same car in which he had just seen Daniel Mack – evaporated. But instead of discontinuing the interaction and leaving to continue his search for Mack, who was still at large, he prolonged the detention.

The New Jersey Supreme Court invalidated a search under similar circumstances in State v. Williams. In Williams, officers pulled over a vehicle after running a mobile data terminal ("MDT") search and learning that the owner, a woman, had a suspended license. 254 N.J. at 15, 17-18. Upon stopping the car, the officer observed that a man was driving. Id. at 15, 18. He later "acknowledged that he was aware that the grounds for an MDT-based stop of the suspended owner no longer existed once he got to the side of the vehicle and could see the owner was not the driver, but that he proceeded anyway." Id. at 22. The officer told his partner he possibly smelled marijuana, which ultimately led to a search of the vehicle that uncovered a handgun. Id. at 19-21. The New Jersey Supreme Court suppressed the gun as evidence, holding that the officer's "uncertain perception of marijuana odor" did not "rise to the level of reasonable and articulable suspicion of criminality to have authorized [defendants'] continued detention at the roadside, once the officer objectively determined the driver was not the owner." Id. at 44-45.

Similarly, here the "constitutional grounds" to initiate and continue the stop "evaporate[d]" once Parisi knew Daniel Mack was not in the car. See id. at 42. The car was otherwise legally parked, and Parisi testified that upon his approach he did not see any other crimes or infractions. He did not testify that he thought any occupant of the Kia Sorento was an associate of Mack's or tied to the shootings earlier in the evening. Because Parisi's investigation of the Kia for Mack ended "immediately upon observing the occupants of the vehicle," he "should have done no more than explain the vehicle had been inadvertently stopped and told defendants they were free to leave." Id. at 46-47.

3. The Alleged Furtive Movements Observed by Parisi Were Insufficient to Support the Prolonged Detention and the Order for McGhee to Exit the Car

Once Parisi learned that Mack was not present and continued the interaction with the occupants of the white Kia Sorento, they were unlawfully detained because he lacked "'specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity.'" State v. Nyema, 249 N.J. 509, 527 (2022) (quoting Rodriguez, 172 N.J. at 126). Reasonable suspicion requires "some minimal level of objective justification for making the stop." State v. Amelio, 197 N.J. 207, 211-12 (2008) (quoting State v. Nishina, 175 N.J. 502, 511

(2003). An "inchoate and unparticularized suspicion or 'hunch'" is insufficient. United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968); see State v Alessi, 240 N.J. 501, 518 (2020) (noting "inarticulate hunches" cannot justify infringement of an individual's Fourth Amendment rights) (quoting State v. Arthur, 149 N.J. 1, 8 (1997)).

While there are circumstances where "'furtive' movements or gestures by a motorist, accompanied by other circumstances, will ripen into a reasonable suspicion that the person may be armed and dangerous or probable cause to believe that the person possesses criminal contraband," Rosario, 229 N.J. at 277 (quoting State v. Lund, 119 N.J. 35, 48 (1990)), the New Jersey Supreme Court has squarely held that "[a]n officer's safety concerns based on the asserted 'furtive' movements by [a] defendant cannot provide reasonable and articulable suspicion to support a detention in the first instance." Id. (emphasis added); see also Lund, 119 N.J. at 47 ("[O]rdinarily, '[m]ere furtive gestures of an occupant of an automobile do not give rise to an articulable suspicion suggesting criminal activity.'" (second alteration in original) (quoting State v. Schlosser, 774 P.2d 1132, 1137 (Utah 1989))). This rule flows from the common-sense observation that "[n]ervousness and excited movements are common responses to unanticipated encounters with police officers on the road." Rosario, 229 N.J. at 277; see also Nyema, 249 N.J. at

533-34 ("[W]hatever individuals may do [in response to a police encounter] – whether they do nothing, something, or anything in between – the behavior can be argued to be suspicious.").

Parisi's extension of the detention and subsequent order for McGhee to exit the car each needed to have been justified by a reasonable and articulable suspicion. But Parisi and the motion court relied almost exclusively on Parisi's safety concerns based on the alleged "furtive" movements he observed prior to ordering McGhee to step out and the character of the neighborhood. Specifically, the motion court cited (1) the "furtive" movement in the back of the car Parisi testified to observing when he first drove by; (2) the "furtive" movement of the defendants while he was approaching the car and speaking with the driver – a period of no more than 30 seconds; (3) the defendants' presence in a "high crime" area; and (4) the fact that Parisi and Pettway were initially outnumbered. (3T 24:8-27:6.) Taken together, these facts do not demonstrate a reasonable and articulable suspicion supporting the detention and the order for McGhee to exit the car.

Parisi testified that he saw the occupants of the car turn around to look at him when he first drove by, and he conveyed the same to Sergeant Carrasquillo. But it is unsurprising that, at 2:15 a.m., the occupants of a parked car in an otherwise quiet parking lot would turn around to see who was pulling

up behind them. Rosario, 229 N.J. at 268 (no reasonable articulable suspicion to support the detention of a parked motorist who "looked back at" the police officer as he parked behind her and "then leaned toward the passenger's seat and was 'scuffling around' with something there"); see also Lund, 119 N.J. at 47 ("When confronted with a traffic stop, it is not uncommon for drivers and passengers alike to be nervous and excited and to turn to look at an approaching police officer." (quoting Schlosser, 774 P.2d at 1138)).

The motion court pointed to additional movements that Parisi testified to seeing as he walked up to the vehicle, a matter of a few seconds, and during his interaction with the vehicle's driver and front passenger. Some but not all of these are visible on the body-worn camera footage: Mr. Williams looked towards Pettway's car and rolled down the window where Pettway was shining a flashlight on him, and he leaned forward to better hear the interaction between Parisi and the driver and front passenger. Mr. Williams also appeared to hand a small cigarette-shaped item to McGhee. None of these movements were threatening, much less suspicious or suggestive of criminal conduct. Even if, however, these movements caused some level of apprehension in

Parisi, under Rosario that apprehension alone would be insufficient to justify a stop or detention. Rosario, 229 N.J. at 277.[4]

Nor does the fact that Parisi and Pettway were "outnumbered" by the car's occupants in a high-crime area change the equation. First, while "the character and prevalence of crime in an area . . . can be one factor in determining whether reasonable suspicion existed," that factor is "insufficient on its own to support particularized suspicion." State v. Goldsmith, 251 N.J. 384, 405 (2022) (holding that even if an officer had convinced the court that crime was prevalent in the neighborhood in question, that fact combined with the defendants' conduct and alleged "furtive" movements "would have been insufficient to justify the stop"); see also State v. Stampone, 341 N.J. Super. 247, 252 (App. Div. 2001). Indeed, "just because crime is prevalent in a

[4] The motion court also stated that Parisi "testified he asked McGhee to step out because of the furtive movements, but this was not limited to just moving front and back" rather it included "McGhee kicking his feet under the front passenger seat, moving fabric of the floorboard to build a wall so you couldn't see what was underneath it." (3T 15:5-13) In fact, Parisi testified to witnessing these movements after McGhee's door was already open. (1T 25:15-26:11; 2T 109:13-22; see also 3T 30:13-15 ("Once he opened the door for McGhee, he observed McGhee manipulating the floorboard with his feet.")) It was error for the court to rely on these facts as contributing to part of Parisi's reasonable suspicion to order McGhee to step out, to the extent it did so, because the officer had already given that order to McGhee by the time he witnessed the conduct in question. In any case, the video does not show the kicking motion the court and Parisi described; rather – as McGhee told Parisi – he was putting his shoes on before stepping out of the car. (Da 40 at 8:27-8:43)

particular area 'does not mean that residents in those areas have lesser constitutional protection from random stops.'" Goldsmith, 251 N.J. at 403 (quoting Shaw, 213 N.J. at 420). Second, the motion court failed to explain why Parisi and Pettway being outnumbered would support a reasonable suspicion about the defendants, particularly where the police officers initiated the interaction and put themselves in a position of being outnumbered.

4. The Court Erred in Concluding That Officer Parisi's Order for McGhee to Exit the Car Did Not Need to be Based on a Reasonable Articulable Suspicion of Criminal Activity

The motion court misapplied the law by concluding that the State did not need to show that Parisi's order for McGhee to exit the car was based on "specific facts that the occupants [we]re armed and dangerous." (3T 27:7-30:8) The motion court held, based on State v. Smith, 134 N.J. 599 (1994), that Parisi only needed to point to "some fact or facts in the totality of the circumstances that would create in an officer a heightened awareness of danger that would warrant an objectively reasonable officer . . . to secure the scene in a more effective manner by ordering the passenger to alight from the car." (3T 29:17-25) This was error.

In State v. Smith, the New Jersey Supreme Court discussed the constitutional standard for ordering a passenger out of a "vehicle stopped for a traffic violation." Smith, 134 N.J. at 618; see also 3T 29:9-24. Smith, and a

subsequent line of cases, address the circumstance where the occupants of a car are already subject to lawful detention (typically, a traffic stop for a motor vehicle violation). Id.; see also State v. Mai, 202 N.J. 12, 15 (2010) ("The standard for determining whether, in the context of a traffic violation, a police officer may order that a passenger alight from a vehicle previously was set forth in [Smith]." (emphasis added)).[5]

In Smith and its progeny, the traffic infraction – which supplies reasonable articulable suspicion supporting the seizure in the first instance – is a necessary predicate. Smith – like Pennsylvania v. Mimms, 434 U.S. 106 (1977), the U.S. Supreme Court case on which Smith expounds – relies on the proposition that once a car has already been lawfully stopped, it is a relatively minimal additional intrusion to order an occupant to step out. Smith, 134 N.J.

[5] Similarly, State v. Conquest, 243 N.J. Super. 528 (App. Div. 1990) – also discussed by the motion court (see 3T 31-33) – involved a traffic stop that was independently supported by reasonable suspicion of a traffic violation. Mai and Conquest are part of a line of cases addressing the permissibility of officers suddenly opening a car door. Here, there is some confusion on the record about whether Parisi opened the door for McGhee or if McGhee opened it. (See, e.g., 1T 25:16-19 (Parisi was unable to recall whether or not he opened the door)). The motion court found that Parisi opened the door. (3T 26:17, 31:22-24) But the MVR footage appears to show that Parisi did not in fact open the door. (Da 41 at 8:30) In any case, Mai held that if the Smith standard was satisfied such that an officer could order a passenger out of the car, "those same circumstances likewise authorize the police officer to open the door of the vehicle as part of ordering a passenger to exit." Mai, 202 N.J. at 15.

at 619-20 (noting that "the order that the passenger step out of the vehicle involved some intrusion on the passenger" but finding "[t]hat intrusion on the passenger's privacy interest is justified, however, because the suspicious movements in the car warranted a reasonably prudent officer's belief that the occupants of the car might be armed"); see also Mimms, 434 U.S. at 111 (describing as "de minimis" the "additional intrusion" on liberty that is "occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car").

But here – where there was no traffic infraction or other basis for reasonable suspicion supporting the detention – the intrusion of ordering a passenger to step out of the vehicle was no longer minimal. It was an escalation of a detention that only began because of Parisi's mistaken identification of the Kia Sorento as Mack's car.

Were Smith to apply in the present circumstances, it would significantly weaken Fourth Amendment protections by permitting the police to detain anyone who happened to be sitting in a lawfully parked car, based merely on the officer's heightened perception of danger. Mimms explicitly rejected such a rule:

> [W]e do not hold today that "whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car." We hold only that once a motor vehicle has been lawfully

> detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.

Mimms, 434 U.S. at 111 n.6 (emphasis added); see also Smith, 134 N.J. at 611.

By applying the incorrect standard as to the removal of McGhee from the vehicle, the motion court failed to hold the State to its burden.

Because the evidence against Mr. Williams would not have been seized but for an investigative detention that was unsupported by a reasonable and articulable suspicion, the motion court should have granted Mr. Williams's motion to suppress.

B. Police Lacked Probable Cause to Search the Vehicle Based on What "Might" Have Been Cocaine Residue on a Scale

Parisi's perception of a scale that "might" have some kind of residue on it was insufficient probable cause to seize the scale and search the vehicle.

"Warrantless searches and seizures are 'presumptively invalid as contrary to the United States and the New Jersey Constitutions.'" Chisum, 236 N.J. at 545 (quoting State v. Pineiro, 181 N.J. 13, 19 (2004)). "Because our constitutional jurisprudence evinces a strong preference for judicially issued warrants, the State bears the burden of proving by a preponderance of the evidence that a warrantless search or seizure falls within one of the few well-

delineated exceptions to the warrant requirement." Id. (quoting Mann, 203 N.J. at 337-38).

The exceptions at play here are the plain-view doctrine and the automobile exception. Under the plain view doctrine, "the constitutional limiting principle is that the officer must lawfully be in the area where he observed and seized the incriminating item or contraband, and it must be immediately apparent that the seized item is evidence of a crime." State v. Gonzales, 227 N.J. 77, 101 (2016). "Under 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. Harris, 457 N.J. Super. 34, 45 (App. Div. 2018) (alteration in original) (quoting Mann, 203 N.J. at 341). Similarly, the automobile exception to the warrant requirement only applies where police "have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous." State v. Witt, 223 N.J. 409, 447 (2015). Probable cause requires "a well-grounded suspicion that a crime has been or is being committed." Pineiro, 181 N.J. at 21 (quoting State v. Moore, 181 N.J. 40, 45 (2004)).

The body-worn camera footage affirmatively shows that Parisi was unsure whether the scale was evidence of a crime. After he first saw the scale,

he told Sergeant Carrasquillo that it looked like there "might be some type of residue" on it. Carrasquillo cautioned Parisi that if it was marijuana residue "we don't do that." Carrasquillo's direction is consistent with N.J.S.A. 2C:36-1b(2), which provides that "[i]f an object appears to be for use, intended for use, or designed for use with cannabis or cannabis items . . . the object is presumed to be a lawful cannabis paraphernalia . . . and does not alone constitute reasonable articulable suspicion that the object is a drug paraphernalia." When Parisi returned to the car and asked McGhee about the scale, McGhee told him it was, in fact, for weighing marijuana. But Parisi seized it nonetheless.

Even after Parisi seized and inspected the scale, all he found was inconclusive "specks of white residue." Sergeant Carrasquillo advised Parisi to wait for a drug-sniffing dog. Once again, Parisi disregarded the guidance from his sergeant and went ahead. Sergeant Carrasquillo's guidance was correct, because Parisi lacked probable cause to forge ahead with the search. The motion court erred in finding to the contrary. Accordingly, the evidence seized should have been suppressed for this reason as well.

CONCLUSION

For the foregoing reasons, Daryl Williams respectfully requests that this Court reverse the order denying suppression and remand the matter for further proceedings consistent with the appellate court's decision.

Respectfully submitted,

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Dated: February 3, 2025

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June 26, 2025

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Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Post Office Box 006
Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Respondent)
v. Daryl M. Williams a/k/a Daryl Williams (Defendant-Appellant)
Appellate Division Docket No. A-2603-23T1
Indictment Nos. 22-03-00400; 22-06-01009
Case No. 21003221
Criminal Action: On Appeal from a Final Judgment of Conviction in the Superior Court of New Jersey, Law Division (Criminal), Monmouth County
Sat Below: Honorable Jill G. O'Malley, P.J.Cr.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of a more formal brief submitted on behalf of the State of New Jersey.

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COUNTERSTATEMENT PROCEDURAL HISTORY

On March 3, 2022, defendant, Daryl Williams, and co-defendants were indicted under Indictment Number 22-03-00400 with the following: second-degree Unlawful Possession of a Weapon, N.J.S.A. 2C: 39-5b (Count One); third-degree Possession of a Controlled Dangerous Substance, N.J.S.A. 2C:35-10a(1) (Count Two); fourth-degree Possession of a Prohibited Weapon, N.J.S.A. 2C:39-3f (Count Four); fourth-degree Possession of a Defaced Firearm, N.J.S.A. 2C:39-9e (Count Five). (Da1-4).

On October 13, 2022, defendants filed a Notice of Motion to suppress evidence pursuant to a warrantless search. (Da8-9). On November 21 and December 6, 2022, the Honorable Jill Grace O'Malley, J.S.C. (now P.J.Cr.), heard testimony from the State's witness, Officer Alex Parisi of the Asbury Park Police Department who testified as to the facts above. (See 1T and 2T) [1]. On February 3, 2023, Judge O'Malley found Officer Parisi's testimony credible and was consistent with the Court's review of the body-worn camera and MVR. (3T: 5-9 to 6-10; 9-6 to 13; 10-15 to 11-5; Da40-41).

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[1] "1T" – transcript of motion hearing, November 29, 2022
"2T" – transcript of motion hearing, December 6, 2022
"3T" – transcript of motion decision, February 3, 2023
"4T" – transcript of plea, February 27, 2023
"5T" – transcript of sentence, April 8, 2024

On February 27, 2023, defendant plead guilty before Judge O'Malley to Count One, second-degree unlawful possession of a weapon, as well as third-degree possession of CDS under Indictment Number 22-06-01009 for a separate, unrelated incident. (4T:3-12 to 18). The State agreed to dismiss the remaining counts of both indictments and recommend a sentence of five years with 42 months of parole ineligibility pursuant to the Graves Act for the weapons charge, concurrent to three years for the CDS charge. (4T:3-19 to 4-4).

Judge O'Malley accepted that plea and on April 8, 2024 defendant was sentenced in accordance with the State's recommendation. (4T:18-16 to 25; 5T; 13-4 to 17-5)

On April 30, 2024, defendant filed its Notice of Appeal and the State now submits this brief in opposition.

COUNTERSTATEMENT OF FACTS

On October 2, 2021, around 2 a.m., Officer Alex Parisi of the Asbury Park Police Department was on patrol in the southwest quadrant of Asbury Park. Officer Parisi, who was familiar with that area and conducted numerous arrests, was patrolling the area due to two separate shootings on Prospect Avenue and Bangs Avenue, with suspects still at large. (1T:7-22 to 9-15; 3T:6-

17 to 7-3).

Officer Parisi in his patrol vehicle in the area of Pine and Monroe Street, approximately two blocks away from the two shootings. While he was approaching the intersection, he observed a car approaching Monroe Street and made an abrupt turn onto Washington Street—looked as if the car turned last-second in order to avoid the officer. Due to the unnatural nature of the turn, Officer Parisi activated his MVR and body-worn camera and turned down Washington Street as well. He then observed two vehicles—a white KIA SUV and a black Mustang—pulled over and parked on the side of the road. Neither his lights or sirens were active. (1T:9-16 to 11-25; 3T:7-4 to 8-4).

Numerous individuals from the two cars got out as Officer Parisi approached in his patrol vehicle. Officer Parisi stopped in the street, but remained in his vehicle while he conversed with the individuals. Immediately, he recognized one of the occupants of the White KIA SUV as Daniel Mack, who he knew from prior field encounters. He also knew that Mack had an active warrant out of Ocean Township for eluding. However, due to the number of individuals present, as well has the officer's knowledge of Mack's prior eludings—including the active one—Officer Parisi deemed it a safety risk and did not attempt to execute the warrant at that time. Instead, he conversed with Mack briefly, telling him to be safe because of the shootings,

then continued down the street. Officer Parisi then called for back-up to set up a perimeter as he circled the block to back to the vehicle. (1T:12-4 to 15-22; 3T:8-5 to 9-13).

However, when Officer Parisi returned to Washington Street, both vehicles were gone. Based on the brief interaction with Mack, Officer Parisi was unable to get the registration for the car nor determine the exact make and model. He did observe that Mack exited a white KIA SUV. Officer Parisi then continued to locate Mack and drove to the area of the Asbury Park Village, a place Mack is known to frequent. This was approximately a quarter mile away from the area of two shootings that night. (1T:16-5 to 17-18; 3T:8-14 to 10-14).

Officer Parisi drives down Atkins Street and approaches the Asbury Park Village. As he drives past the parking lot, he observed a white KIA SUV in the parking lot, about 10 spaces away. He then reversed and entered the parking lot. As he passed the car, Officer Parisi observed the car to be idling and, while the windows were tinted, could also saw movement in the back seat. Officer Parisi parked his vehicle in a way that the headlights and MVR camera was facing the SUV. He also radioed to nearby units that he located the white KIA SUV in the parking lot of the Asbury Park Village. (1T:18-1 to 19-1; 3T:10-15 to 12-1). Officer parked in a way that did not block the car in the

parking spot and he did not active his lights. (1T:2-3 to 10; 3T:12-14 to 20).

Officer Parisi approached the SUV on the passenger side. As he approached, he continued to see movement in the back seat and that the vehicle was idling. Due to the windows being tinted and it being late in the night, Officer Parisi could not identify the occupants in the car as he approached. Believing that this was the vehicle that Mack was in, he approached the front passenger and asked what they were doing. While he spoke to the front passenger, he could see the backseat passengers moving, but could not make out who they were initially. He then used his flashlight to illuminate the faces of the occupants in the front and backseat. Officer Parisi continued to see the backseat passengers making jerking movements. (1T:19-22 to 21-4; 22-11 to 23-13; 3T:13-7 to 14-13).

Once he illuminated the occupant's faces with his flashlight, Officer Parisi recognized and knew both rear passengers from previous interactions and arrests. Officer Parisi identified the rear driver's side passenger as defendant, Daryl Williams, and the other rear seat passenger as co-defendant, Tyheim McGhee. Daniel Mack was not among the occupants in the vehicle. (1T:23-14 to 24-19; 3T:14-5 to 20).

However, as Officer Parisi was speaking with McGhee, he was defendant continue to move around and reach towards the floorboard.

McGhee was also kicking his feet under the passenger seat and moving the fabric of the floorboard to build a wall. Based on this concerning behavior and furtive movements, Officer Parisi asked McGhee to step out of the vehicle and for defendant to show his hands. As McGhee stepped out of the vehicle, and was patted down for safety, Officer Parisi observed a scale on the floorboard. (1T:25-2 to 28-15; 3T:14-21 to 15-20).

Defendant and the driver, Darren Spriggs, was also asked to step out of the vehicle and patted down for weapons. Once defendant and his co-defendants were out of the vehicle, Officer Parisi removed the scale from the rear floorboard and observed a white residue on the top of the scale. McGhee denied knowing anything about it when asked. Officer Parisi, based on his training and experience, believed the residue was consistent with cocaine. (1T:28-16 to 29-2; 3T:15-21 to 16-18).

Once the scale was secured in Officer Parisi's vehicle, he spoke with his Sergeant and attempted to get a narcotics K-9 unit to come on scene. However, because the K-9 unit would have taken a significant period of time to arrive on scene, Officer Parisi searched the vehicle based on the scale with white residue found. Officer Parisi and Officer Scott Ritter, also of the Asbury Park Police Department, searched the vehicle starting with the rear passenger side. This search yielded a knotted plastic bag of suspected CDS crack

cocaine and paraphernalia. (1T:29-4 to 30-15; 3T:16-19 to 17-21).

Officer Ritter then search the front passenger seat and located a loaded Taurus handgun. All occupants of the vehicle were subsequently arrested and searched. Defendant was found with a black scale with white residue similar to the one found in the vehicle. (1T:31-9 to 32-20; 3T:17-22 to 18-9).

LEGAL ARGUMENT

POINT I

THE LOWER COURT DID NOT ERR IN DENYING DEFENDANT'S MOTION TO SUPPRESS.

Defendant raises two challenges to the lower court's affirmance of the search of defendant's vehicle. First, that the investigative stop was unlawfully prolonged and not based on reasonable suspicion. Db18-31. Second, that officers lacked probable cause to search the vehicle based on the scale with white residue that was found in plain view. Db34-36. However, the investigative stop was supported by reasonable suspicion by the officer and was conducted in a reasonable amount of time in order to confirm or dispel the suspicion. Additionally, the resulting search of the vehicle was based on probable cause for suspected drug activity. The factual findings of the lower court and legal precedent support the affirmance of the lower court's order.

This Court's review of a motion to suppress is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). Factual findings made and relied upon by the trial court are upheld "so long as those findings are supported by sufficient credible evidence in the record." State v. Ahmad, 246 N.J. 592, 609 (2021) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). This deference is based on "the recognition of the trial court's 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Nyema, 249 N.J. at 526 (quoting Elders, 192 N.J. at 244). The trial court's legal conclusions, however, "and its view of 'the consequences that flow from established facts,' are reviewed de novo." Id. at 526-27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Additionally, "[i]t is a long-standing principle underlying appellate review that 'appeals are taken from orders and judgments and not from opinions . . . or reasons given for the ultimate conclusion.'" State v. Washington, 452 N.J. Super. 164 (App. Div. 2018) (quoting State v. Scott, 229 N.J. 469, 479 (2017). "[B]ecause an appeal is taken from a trial court's ruling rather than reasons for the ruling, we may rely on grounds other than those upon which the trial court relied." State v. Adubato, 420 N.J. Super. 167, 176 (App. Div. 2011).

Deference likewise does not end because a lower court's factual findings are based upon video evidence; "[v]ideo-recorded evidence is reviewed under

the same standard." Hagans, 233 N.J. at 38; S.S., 229 N.J. at 379-81; State v. A.M., 237 N.J. 384, 395-96 (2019). Thus, "[w]hen more than one reasonable inference can be drawn from the review of a video recording ... then the one accepted by a trial court cannot be unreasonable." S.S., 229 N.J. at 380. "In such a scenario, a trial court's factual conclusions reached by drawing permissible inferences cannot be clearly mistaken, and the mere substitution of an appellate court's judgment for that of the trial court's advances no greater good." Ibid.

There are a few exceptions to warrantless searches and seizures. State v. Patino, 83 N.J. 1, 7 (1980). One well known exception is an investigative stop, also known as a Terry[2] stop, which is "a procedure that involves a relatively brief detention by police during which a person's movement is restricted." State v. Goldsmith, 251 N.J. 384, 399 (2022) (citing State v. Rosario, 299 N.J. 263, 272 (2017). A valid investigative stop is one "based on 'specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity.'" Ibid. (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)).

Importantly, "[r]easonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest."

State v. Stovall, 170 N.J. 346, 356 (2002). The standard requires "'some minimal level of objective justification for making the stop.'" State v. Nishina, 175 N.J. 502, 511 (2003) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). The test is "highly fact sensitive and, therefore, not readily, or even usefully, reduced to a neat set of legal rules." Ibid. Additionally, similar to reasonable suspicion required for a traffic stop, "[c]onstitutional precedent requires only reasonableness on the part of the police, not legal perfection." State v. Williamson, 139 N.J. 302, 304 (1994).

The "reasonable suspicion" standard is one of the factors that differentiates an investigatory stop from a field inquiry, which is a voluntary encounter between police and a member of the public. Rosario, 229 N.J. at 271. The other factor is "whether an objectively reasonable person would have felt free to leave or to terminate the encounter with police..., measured from a defendant's perspective." Id. at 273 (citing State v. Maryland, 167 N.J. 471, 483 (2001)).

The lawfulness of an investigatory stop is evaluated based on "the totality of the circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions." State v. Chisum, 236 N.J. 530, 546 (2019) (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)); State v. Davis, 104 N.J. 490, 504 (1986). "[T]here is [no] litmus-paper test

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[2] Terry v. Ohio, 392 U.S. 1, 88 (1968).

for...determining when a seizure exceeds the bounds of an investigative stop." Id. at 547 (quoting State v. Dickey, 152 N.J. 468, 476 (1998)). Rather, courts must "examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time is necessary to detain the defendant." Ibid. (quoting Dickey, 152 N.J. at 477).

Here, Officer Parisi had reasonable and articulable suspicion to initiate an investigatory stop of the white KIA SUV, which defendant was a passenger. This did not start as a field inquiry as it is clear, from defendant's perspective, that he and his co-defendants were not free to leave. While Officer Parisi testified that he did not block defendant's car, additional officers pulled into the parking lot of the Asbury Park Village and blocked the ingress/egress of that lot.

However, the reason for Officer Parisi approaching the vehicle was not to conduct a voluntary conversation with defendant. Instead, Officer Parisi had reasonable suspicion to believe that Daniel Mack—who had an active warrant for his arrest—was in that vehicle and he had a duty to effectuate that arrest. See State v. Bookman, 251 N.J. 600 (2022) ("'Law enforcement officers have a duty to enforce validly issued arrest warrants without distinction.'") (quoting State v. Jones, 143 N.J. 4, 17 (1995)). Moments prior to approaching the car, Officer Parisi observed Mack exit a white KIA SUV,

but was unable to make an arrest at that time due to officer safety. While trying to locate Mack, in an area he is known to frequent, Officer Parisi observed a white KIA SUV in the parking lot of the Asbury Park Village. Believing it to be the same vehicle, as it was the same model and color, Officer Parisi conducted an investigatory stop of the vehicle in order to arrest Mack. Whether or not Officer Parisi was ultimately correct that Mack was in the vehicle, his stop was based on the reasonable suspicion that he was, and the stop was conducted in order to confirm or dispel that belief.

Due to the time of night, Officer Parisi was not able to immediately identify the occupants of the vehicle and had to use his flashlight. As he was confirming or dispelling his suspicion that Mack was in the car, which was well within the scope of the investigative stop, additional suspicion ripened. Officer Parisi testified to his heightened sense of security and safety due to the two shootings that night not far from the parking lot with no suspects having yet been identified and being in a high crime area. (1T:21-5 to 24; 3T:26-18 to 27-6). He also testified that he could see movement inside the vehicle as he approached. As he was identifying the occupants of the car, he realized Mack was not among them. However, simultaneously, he continued to see movements from the back passengers, specifically jerking forward, but is unable to clearly see due to it being dark. (Da40 – 8:01-8:48)

As Officer Parisi observed these furtive movements, he then recognized the two backseat passengers: defendant and co-defendant, Tyheim McGhee. Officer Parisi also knew these defendants from prior arrests—including an investigation where McGhee was the victim of gunshots—as well as knew they were Hoover Crips gang members. Additionally, Officer Parisi observed defendant reach towards the floorboard. Based on the totality of all the circumstances, Officer Parisi had reasonable suspicion of criminal activity to continue the investigative stop to confirm or dispel this additional suspicion.

Contrary to defendant's argument about the holding in State v. Williams, 254 N.J. 8 (2023), the investigatory stop of defendant and his co-defendants did not need to immediately terminate once Officer Parisi determined Mack was not in the vehicle. In Williams, the Court held that "[t]he limitation [of a motor vehicle stop] is that once it becomes reasonably apparent to the officer that the observed driver does not resemble the owner...the pursuit or stop of the driver must cease." Id. at 40. However, the Court also made an important distinction:

> [i]f, however, during the brief time in which the officer is lawfully at the side of the car providing the motorist with an explanation and permission to leave, that officer observed in plain view a firearm, illegal narcotics, or other apparent contraband within the vehicle, the officer may pursue a further investigation. In that situation, the officer may detain the motorist for an additional reasonable period of time based on reasonable suspicion that

another, separate crime is being or has been committed.

Id. at 41-42 (citing State v. Dunbar, 229 N.J. 521, 540 (2017)). The Court also made note of the difficulties in identifying occupants of a vehicle, including stops that occur at night or in poorly lit areas. Ibid. Therefore, if additional suspicion ripens during the scope of the initial stop, it is reasonable, thus lawful for the officer to continue to confirm or dispel this new suspicion.

Here, the stop was not unlawfully prolonged and was well within the scope of the stop. Like the Court in Williams held, the observations by Officer Parisi during the initial stage of the stop led to a need for further investigation into the furtive movements the occupants of the vehicle were making. These furtive movements were also not observed in isolation. Importantly, this stop occurred on the same night as two shootings in the immediate area, and was also taking place in a high crime area, at night, and with several known gang members in the car (known to the officer though prior arrests). Based on the totality of the circumstances, there was additional suspicion of criminal activity to continue the stop, which ultimately ripened into probable cause to search the vehicle. Here there was fully corroborated criminal activity. Rosario, 299 N.J. at 276.

Based on the concern for officer safety, Officer Parisi asked McGhee out of the vehicle. See State v. Smith, 134 N.J. 599, 618 (1994) (holding that "the

officer need point only to some fact or facts in the totality of the circumstances that would create in a police officer a heighted awareness of danger that would warrant an objectively reasonable officer securing the scene in a more effective manner by ordering the passenger to alight from the car."). As he did, Officer was clearly able to see a scale with white residue, which the officer testified he knew to be used for drug activity. (1T:28-1-9). He also testified that the white powder residue was consistent with that of powder cocaine. Ibid.

Officer Parisi observed this scale in plain view of the backseat as McGhee exited the vehicle. "A police officer may seize evidence in plain view without a warrant if the officer is 'lawfully...in the viewing area' when he discovers the evidence, and it is immediately apparent the object viewed is 'evidence of a crime, contraband, or otherwise subject to seizure." State v. Keaton, 222 N.J. 438, 448 (2015) (quoting State v. Johnson, 171 N.J. 192, 206 (2002)). As such, Officer Parisi was lawfully conducting an investigatory stop when he saw the scale – in plain view – and immediately identified it as related to drug-activity.

This plain view observation of the scale with residue is consistent with cocaine and gave Officer Parisi probable cause to believe there was drug activity in the vehicle. In State v. Witt, 223 N.J. 409, 450 (2015), our Supreme

Court held that automobile searches supported by probable cause arising from unforeseeable and spontaneous circumstances are permissible. See also State v. Rodriguez, 459 N.J. Super. 13, 22 (App. Div. 2019). Whether the development of probable cause is sufficiently unforeseeable and spontaneous "is a fact-sensitive inquiry that should be analyzed case by case." State v. Smart, 253 N.J. 156, 173 (2023). An investigatory stop that is "deliberate, orchestrated, and wholly connected with the reason for the subsequent seizure of the evidence" cannot be said to be "unforeseeable." Id. at 171-72. Circumstances that "develop ... suddenly or rapidly" can be characterized as "spontaneous." Ibid.

Applying these definitions to the facts before it, the Smart Court found neither unforeseeability, nor spontaneity present in that case. Id. at 172-173. The "interconnected events" that ended with the warrantless search of Smart's vehicle, a GMC, which was started by police two months prior to the stop, with law enforcement's receipt of "a report from a concerned citizen that connected a particular residence – and a vehicle like the [defendant's] GMC – with drug deals." Ibid. One month later, law enforcement received CI information connecting the defendant with the GMC and "drug distribution." Ibid. Using that "long-held information," five officers "surveilled defendant collectively for forty-seven minutes before the stop." Ibid.

> Those combined circumstances, which together gave rise to probable cause, can hardly be characterized as unforeseeable. Although not one hundred percent certain, the officers reasonably anticipated and expected they would find drugs in the GMC. They had invested almost two hours investigating, surveilling, and utilizing five officers. ... And they made the decision to conduct a canine sniff to transform their expectations into probable cause to support a search.
>
> Ibid.

The Smart Court further found "the circumstances giving rise to probable cause ... anything but spontaneous" as they "unfolded over almost two hours while investigating long-held information from a CI that defendant had utilized the GMC for drug trafficking." Id. at 173. Thus, while "the canine sniff is what culminated in probable cause," it "did not exist in a vacuum" and "served to confirm and provide evidentiary support of the investigators' suspicions. The canine sniff was just another step in a multi-step effort to gain access to the vehicle to search for the suspected drugs." Ibid.

None of the factual touchstones present in Smart that made the probable cause there wholly foreseeable and not spontaneous can be found in the facts surrounding the stop and subsequent search of the defendant's vehicle here. Unlike the officers in Smart, Officer Parisi did not go on duty on October 2, 2021, in possession of long-held information connecting the defendant to drug activity or weapons possession. To the contrary, Officer Parisi approached the

white KIA SUV, for the first and only time that night, to effectuate a warrant of Mack who he believed to be in that vehicle. Moreover, Officer Parisi did not know whether defendant would be in that vehicle or that the drugs and weapon were or would be present in the vehicle. Thus, it is clear that, unlike the five officers in Smart who went on duty and conducted a lengthy surveillance of the defendant, Officer Parisi did not target the defendant for a drug and weapon investigation that was geared towards a vehicle search at its conclusion.

Just as Smart exemplifies one set of facts indicative of foreseeability and lack of spontaneity, the lower court correctly found the facts here exemplified one set of facts indicative of unforeseeability and unspontaneity. Officer Parisi had no prior knowledge of the defendant that provided him with reasonable suspicion that any drug or weapon-related activity would be present in the vehicle as a basis to conduct a stop, where he was – at that time – only looking to effectuate a warrant for Mack. The analysis conducted by the lower court led it to find that probable cause here developed spontaneously and unforeseeably during an unanticipated motor vehicle stop prompted by Officer Parisi observing Mack in a white KIA SUV with an active warrant. In the course of determining if Mack was in the vehicle, additional suspicion arose to order the passenger out of the vehicle. Once Officer Parisi observed drug

paraphernalia in the vehicle, it was wholly appropriate, and in keeping with both Smart and Witt, for him to continue his investigation; it cannot make the totality of the circumstances here deliberate or orchestrated like those in Smart. Because the development of probable cause on this motor vehicle stop arose spontaneously and unforeseeably, Officer Parisi was permitted to search the vehicle roadside pursuant to the automobile exception. In so finding, the lower court did not err and, as such, this Court should affirm.

CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the State respectfully requests this Court deny defendant's appeal and affirm the order entered by the lower court.

Respectfully submitted,

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2603-23
INDICTMENT NOS. 22-03-00400;
22-06-01009

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Monmouth County
DARYL M. WILLIAMS,	:	
Defendant-Appellant.	:	Sat Below: Hon. Jill G. O'Malley, J.S.C.
		DEFENDANT IS CONFINED

Your Honors:

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

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PRELIMINARY STATEMENT

The State's arguments in favor of upholding the motion court's denial of defendant-appellant Daryl M. Williams's motion to suppress are unavailing, and this Court should reverse the decision of the lower court.

Notably, the State concedes that Mr. Williams and the others in the White Kia Sorento were detained from the moment Officer Parisi approached their vehicle. Accordingly, it is undisputed that any evidence recovered during the stop must be suppressed unless the State establishes that Parisi and his fellow officers had reasonable and particularized suspicion throughout the encounter, even after Parisi realized—almost immediately—that he had detained the wrong vehicle.

As set forth in Mr. Williams's opening brief, the State failed to meet that burden because once Parisi knew the suspect he had been looking for was not in the vehicle, he had no justification to detain the vehicle's occupants any longer. He nevertheless prolonged the encounter, detaining the vehicle and its occupants well after any reasonable suspicion had evaporated. This escalated into the search that resulted in the seizure of the evidence that led to Mr. Williams's arrest, all without legal justification.

In response, the State erroneously argues that Parisi's observations as he approached and briefly spoke with the occupants of the car—when he realized

that his suspect, Daniel Mack, was not in the car—gave rise to reasonable suspicion that some other unspecified criminal activity was afoot. But the scattering of allegedly "furtive" movements Parisi claimed to have observed before he ordered Tyheim McGhee to exit the car are, as a matter of law, insufficient on their own to establish reasonable suspicion. Likewise, the State's after-the-fact attempts to justify the detention by referencing the character of the neighborhood and shootings in the area—without tying any of that to the defendant or his carmates—fail to establish a well-founded reasonable suspicion that any of the passengers in the vehicle were involved in criminal activity that evening.

The State also misreads State v. Williams, in which the New Jersey Supreme Court suppressed evidence that had been seized by an officer after he erroneously pulled over a motorist. There, on facts analogous to those here, the Court held that the officer should have discontinued the stop once he realized his mistake. So too here. Yet, the State seizes on language from Williams in which the Court hypothesized that its analysis might have been different if the officer had observed in plain view "a firearm, illegal narcotics, or other apparent contraband within the vehicle." But that exception does not apply here, where Parisi prolonged the stop based on purported "furtive" movements. Because Parisi lacked reasonable suspicion to justify prolonging the stop and

ordering McGhee to step out of the car, the motion court's order denying suppression of the evidence should be reversed.

Likewise, a search and seizure must be based on more than a mere hunch that an object in a car "might" have residue on it. Here, the legality of Parisi's seizure of the scale and the subsequent search of the car hinge on whether it was "immediately apparent" to Parisi that the scale he saw evidenced criminality. The State both overstates the record—claiming that Parisi "clearly" saw residue on the scale when his statements in the contemporaneous video demonstrate that he was far from certain about what he saw—and omits the key fact that Parisi's own sergeant advised Parisi not to proceed with seizure and search based solely on Parisi's hunch that the scale "might" have residue on it. These facts demonstrate that it was not "immediately apparent" that the scale Parisi observed was evidence of any crime. For this reason too, this Court should reverse the motion court's order denying Mr. Williams's motion to suppress.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant respectfully relies on the procedural history and statement of facts contained in his initial appellant brief, filed with this Court on February 4, 2025.

LEGAL ARGUMENT

POINT I

THE CIRCUMSTANCES DID NOT GIVE RISE TO REASONABLE SUSPICION TO PROLONG THE DETENTION BEYOND THE TIME NECESSARY FOR POLICE TO CONFIRM THAT THEIR SUSPECT WAS NOT PRESENT.

For the reasons stated herein and in defendant-appellant's opening brief, the State's post-hoc justification of the prolonged detention and order for McGhee to exit the car fails. Because the search of the car was based on the scale that Parisi observed only after he had unlawfully prolonged the detention and ordered McGhee to exit the car, all evidence recovered during that search should be suppressed. State v. Goldsmith, 251 N.J. 384, 400 (2022) ("An investigative detention that is premised on less than reasonable and articulable suspicion is an 'unlawful seizure,' and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." (quoting State v. Elders, 192 N.J. 224, 247 (2007))).

A. Prolonging the Stop Was Impermissible Under State v. Williams.

Contrary to the State's position, State v. Williams, 254 N.J. 8 (2023), does not support a finding that Parisi had reasonable suspicion to prolong the stop after he almost immediately determined that Mack (the suspect he had been targeting) was not in the car. As discussed in defendant-appellant's

opening brief, Williams stands for the proposition that "the Fourth Amendment does not allow motor vehicle stops to be unduly prolonged." Williams, 254 N.J. at 41. In Williams, the New Jersey Supreme Court suppressed a firearm found during a car search after an officer prolonged the detention of a driver he had mistakenly pulled over. Id. at 46. The officer was looking for the owner of the car who had a suspended license, but immediately realized that the driver (a man) was not the owner (a woman). Id. at 44. Under those circumstances—and where the officer "did not observe any contraband inside the car while he was standing next to it," the driver did not "appear[] to be impaired by drugs or alcohol," and the vehicle "had not run a red light or violated traffic laws"—the Supreme Court held that "immediately upon observing the occupants of the vehicle, [the officer] should have done no more than explain the vehicle had been inadvertently stopped and told defendants they were free to leave." Id. at 45-46 (emphasis added).

The State ignores the holding in Williams, and instead focuses on the Court's observation that it might have been appropriate to prolong the stop to "pursue a further investigation" if the officer had observed "in plain view a firearm, illegal narcotics, or other apparent contraband within the vehicle." Id. at 42. But the Williams Court distinguished that hypothetical from the facts in

the case, where the officer could not prolong the stop on a "mere hunch" because he "maybe" smelled marijuana. Id. at 45.

So too here. Parisi's decision to prolong the stop and order McGhee out of the vehicle was not based on the plain view observation of any contraband. Nor was it based on any observed traffic violation or suspicion of intoxication. Rather, as explained below and in defendant-appellant's opening brief, the prolonged stop and subsequent seizure was based solely on circumstances akin to the "mere hunch" that the Williams Court rejected.

B. Parisi's Alleged Safety Concerns and Generalized Suspicion Cannot Support a Detention in the First Instance.

1. Furtive Movements Alone Cannot Justify a Detention.

The State's primary argument is that the prolonged detention was permissible because Parisi observed "furtive" movements when he approached the vehicle. As set forth in defendant-appellant's opening brief, Parisi observed the movements in question for no more than a few seconds. Yet, the State claims that in those few seconds, the movements Parisi observed required further investigation and made him apprehensive, giving rise to reasonable suspicion. (Pb12)[1] Aside from the fact that the State never explains what crime

[1] The same record citations used in Mr. Williams's initial appellate brief are used in this brief. Additionally, "Pb" is used to refer to the State's respondent brief, filed with this Court on June 26, 2025. "Db" is used to refer to defendant-appellant's initial brief, filed with this Court on February 4, 2025.

Parisi believed Mr. Williams and the others were committing based on the few seconds of movement he observed, these justifications run headlong into controlling law. As the New Jersey Supreme Court has held, "[o]ur jurisprudence is well-settled that seemingly furtive movements by the suspect, without more, are insufficient to constitute reasonable and articulable suspicion." Goldsmith, 251 N.J. at 400; see also State v. Rosario, 229 N.J. 263, 277 (2017) ("[A]n officer's safety concerns based on the asserted 'furtive' movements by [a] defendant cannot provide reasonable and articulable suspicion to support a detention in the first instance."); State v. Lund, 119 N.J. 35, 47 (1990) ("[O]rdinarily, '[m]ere furtive gestures of an occupant of an automobile do not give rise to an articulable suspicion suggesting criminal activity.'" (second alteration in original) (quoting State v. Schlosser, 774 P.2d 1132, 1137 (Utah 1989))).

Parisi's sole justification for detaining and approaching the car was to search for his suspect, Mack. But, as the State concedes, Parisi quickly realized that Mack was not in the car. At that point, Parisi was back to the "first instance" and needed "reasonable and articulable suspicion to support [the] detention." Rosario, 229 N.J. at 277. The alleged "furtive" movements, on which the State relies, do not meet that test.

2. The State Is Incorrect About What Movements Parisi Observed Prior to Ordering McGhee to Exit the Car.

In its effort to rationalize, post-hoc, Parisi's decision to detain a car full of individuals he had accidentally happened upon while searching for another suspect, the State overstates the extent of the movements Parisi observed.

In its counterstatement of facts, the State asserts that one of the bases for Parisi's order for McGhee to step out of the car was that he observed McGhee "kicking his feet under the passenger seat and moving the fabric of the floorboard to build a wall." (Pb6) As defendant-appellant pointed out in his opening brief, (Db30 n.4), Parisi's own testimony belies this argument: Parisi observed the conduct he characterizes as "kicking" to "build a wall" after he ordered McGhee to step out of the car and the car door was already open. (1T 25:15-26:11; 2T 109:13-22; see also 3T 30:13-15 ("Once he opened the door for McGhee, he observed McGhee manipulating the floorboard with his feet.")) This conduct, then, cannot be used to justify Parisi's initial prolonging of the detention or his order for McGhee to exit, which are at issue here.

3. The Additional Circumstances Cited By the State Do Not Establish Reasonable Suspicion of Criminal Activity.

The State next insists that atmospheric factors such as the character of the neighborhood, shootings in the area, and alleged (but unsupported) accusations that Mr. Williams and others in the car had gang affiliations,

combined with the "furtive" movements, justified prolonging the stop and ordering McGhee out of the car. But the State never articulates why these factors are relevant. It suggests that those factors may have made Parisi apprehensive for his safety, but if Parisi never had reasonable suspicion to support the stop in the first place, a free-floating concern for officer safety cannot justify the stop in and of itself. (See Db31-Db34)

Regarding the shootings that occurred that evening, Parisi never claimed to believe that any of the occupants in the car were involved in those shootings. In that respect, Williams and his fellow passengers were no different than the many other residents who happened to be in the area. Mr. Williams did not waive his constitutional rights by happening to be present in the general area where someone else may have committed a crime. As the New Jersey Supreme Court has held, "just because crime is prevalent in a particular area 'does not mean that residents in those areas have lesser constitutional protection from random stops.'" Goldsmith, 251 N.J. at 403 (quoting State v. Shaw, 213 N.J. 398, 420 (2012)).

The State next tries to defend Parisi's prolonged detention and search by asserting that Mr. Williams and the others were known to be "gang members." (Pb13-Pb14) Parisi's testimony on this subject lacked corroboration or support. (1T 23:22-24:17) Indeed, Mr. Williams (through counsel) adamantly denied

the allegation that he was a gang member. (2T 117:24-118:6) When Parisi's assertion was tested, it became clear that he lacked foundation for the allegation that Mr. Williams and others were gang members. (2T 119:3-11, 122:19-125:3; see Db13 n.3) Ultimately, the motion court excluded the testimony, (2T 124:21-125:4), and declined to rely on any purported gang affiliations in its opinion, (See generally 3T; see Db13 n.3). For the State to now rely on this testimony is not only improper but lays bare the weakness of its arguments.

Indeed, even if Parisi suspected that Mr. Williams or any of the others in the car had gang affiliations, this would not justify the prolonged detention or search here, where Parisi's basis for the stop was a search for someone who he quickly realized was not there. Any other holding would give law enforcement free rein to detain and search anyone who they thought might be a gang member simply based on nondescript "furtive" movements.

Finally, the State points to the fact that Parisi allegedly had interacted with some of the individuals in the car previously. Parisi alleged that he knew Mr. Williams from unspecified "drug-related arrests," and that he knew McGhee from "drug-related investigations" and because McGhee had been the victim of a shooting. (1T 23:22-24:17) But those facts would not provide reasonable suspicion that any of those individuals were engaged in criminal

activity. In fact, the State concedes that "Officer Parisi had no prior knowledge of the defendant that provided him with reasonable suspicion that any drug or weapon-related activity would be present in the vehicle as a basis to conduct a stop, where he was—at that time—only looking to effectuate a warrant for Mack." (Pb18)

In any case, that an individual has been arrested in the past does not give officers carte blanche to detain that person in subsequent interactions. For example, in Rosario, the New Jersey Supreme Court found that the officer did not have reasonable suspicion to detain the occupant of a parked car based on her allegedly furtive movements. See Rosario, 229 N.J. at 268, 276-77. The Court so held despite the officer's testimony that, after detaining the defendant, he recognized her from a drug arrest six months prior. Id. Likewise, here the State cannot rely on the arrest history of individuals who were already detained from the moment Parisi approached their car to retroactively justify the detention.

In short, absent reasonable and articulable suspicion of criminal activity, Parisi could not continue the interaction: an amorphous awareness of danger or fear for officer safety is not sufficient. But the State never articulates what criminal activity Parisi believed he was investigating; it relies on the sort of "furtive" movements that the New Jersey Supreme Court has recognized are

common of individuals who are unexpectedly detained by the police, see State v. Nyema, 249 N.J. 509, 533-34 (2022), and innuendo about the neighborhood and affiliations of Mr. Williams and the others in the car. For the reasons explained here and in defendant-appellant's opening brief, those justifications fall short of what the Fourth Amendment and the New Jersey Constitution demand.

POINT II

IT WAS NOT "IMMEDIATELY APPARENT" THAT THE SCALE PARISI OBSERVED WAS EVIDENCE OF A CRIME SUFFICIENT TO ESTABLISH PROBABLE CAUSE.

If this Court finds, as it should, that Parisi lacked reasonable suspicion to prolong the stop and order McGhee to exit the car, then it need not reach the question of whether there was probable cause to search because Parisi only observed the scale after he improperly prolonged the detention and ordered McGhee to exit the car. But even if the detention had been lawful (which it was not) the motion court should have also granted the motion to suppress because Parisi's uncertain perception of a vague "residue" on the scale was insufficient to provide probable cause for the search of the vehicle.

The State misreads the record with respect to the seizure of the scale in the car and Officer Parisi's inspection of the scale. The State claims that when McGhee stepped out of the car, Parisi was "clearly able to see a scale with

white residue." (Pb15) In fact, it was not clear to Parisi whether there was residue on the scale or not. Indeed, in Parisi's phone call with his sergeant before seizing the scale, Parisi merely stated "it looks like there might be some type of residue or something." (Da 40 at 13:47-14:22; Da 41 at 13:50-14:28; see also 2T 72:25-73:24) Based on that uncertain description, the sergeant doubted that that Parisi had probable cause to seize evidence or search the vehicle, and advised Parisi to get a drug-sniffing dog. (Da 40 at 14:22-15:08; see also 2T 73:24-74:22) Parisi disregarded this guidance and went ahead and seized the scale anyway. The State omits these facts from its brief, and further omits that even after he retrieved the scale, all Parisi observed were some "specks of white residue" and that his sergeant still believed he needed to get a drug-sniffing dog to establish probable cause for a search. (Da 41 at 17:51-18:44; 2T 85:3-6) These facts refute the State's argument that Parisi's observations of the scale provided evidence of a crime to justify the search. See State v. Gonzales, 227 N.J. 77, 101 (2016).[2]

[2] The State's argument that, under State v. Smart, the circumstances of the encounter were unforeseeable and spontaneous is a non-sequitur, as Mr. Williams did not argue that that element of the automobile exception to the warrant requirement was unsatisfied.

CONCLUSION

For the foregoing reasons, and those stated in defendant-appellant's opening brief, Daryl Williams respectfully requests that this Court reverse the order denying suppression and remand the matter for further proceedings consistent with the appellate court's decision.

Respectfully submitted,

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