SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2794-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from an Order of the Superior Court of New Jersey, Law
v.	:	Division, Union County.
AKEEM M. BARPTELUS, A/K/A AKEEM BARPTELUS, A/K/A BARPTELUS	:	Indictment No. 21-10-006461
	:	Sat Below:
Defendant-Appellant.	:	Hon. Candido Rodriguez, Jr., J.S.C.
	:	

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: October 17, 2024

DEFENDANT IS CONFINED

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PRELIMINARY STATEMENT

This case serves as an example of unreasonable behavior by police officers and prosecutors. On December 18, 2020, Elizabeth police officers John Maldonado and Michael Castro, following behind a car driven by M.P., and occupied by defendant Akeem Barptelus and three other people, searched the license plate in a database which returned a possible warrant for M.P. Although Officer Maldonado testified that he knew the database is not always accurate and that it was common practice to always confirm the warrant before making an arrest, he nevertheless stopped the car without confirming that the warrant was valid. Still not knowing whether the warrant was valid, police then proceeded to search the car based on the smell of marijuana, recovering a small quantity of marijuana and a handgun. It was only after completing the search that the officers determined that the outstanding warrant was not in fact for M.P., but rather, was for someone with a similar name.

Not only did police behave unreasonably when deciding to stop the car, but so did prosecutors when they waited more than two years to file a motion to compel a buccal swab from defendants so that they could attempt to compare DNA to samples found on the gun. This unjustifiable delay rendered the search unreasonable.

PROCEDURAL HISTORY

On October 13, 2021, a Union County Grand Jury returned Indictment Number 21-10-6461-I charging defendant Akeem M. Barptelus and co-defendants B.B.,[1] J.B., and M.P. with second-degree unlawful possession of a handgun N.J.S.A. 2C:39-5(b)(1) (Count 1); and fourth-degree possession of a large capacity ammunition magazine, N.J.S.A. 2C:39-3(j) (Count 2). (Da1-2)[2] Barptelus was also charged in a disorderly persons complaint for possession of a controlled dangerous substance, less than fifty grams of marijuana, 2C:35-10(a)(4). (Da3)

On February 28, 2022, J.B. filed a motion to suppress evidence seized by police following a warrantless search of M.P.'s vehicle. (Da11) Barptelus joined the motion on March 5, 2022. (Da15) On July 12, 2022, the Honorable Candido Rodriguez, Jr., J.S.C. held an evidentiary hearing. (1T) On August 23,

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[1] We refer to co-defendants by their initials in the interest of privacy, as it appears their charges were dismissed and records related to the incident expunged. See R. 2:6-1(a)(3); R. 1:38-3(c)(7).

[2] "Da" – Defendant's confidential appendix
"1T" – July 12, 2022 (motion to suppress hearing)
"2T" – July 6,2023 (motion to compel buccal swab hearing)
"3T" – December 11, 2023 (plea)
"4T" – April 12, 2024 (sentence)

2022, the court issued a written opinion and order denying defendants' motion to suppress. (Da13; Da14-40)

On January 13, 2023, the State filed a motion to compel buccal swabs from defendants. (Da41-58) On July 6, 2023, the court heard oral argument and the same day granted the State's motion. (2T; Da59-68).

On December 11, 2023, Barptelus pled guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) (Count 1). (3T; Da6-12) On April 12, 2024, Barptelus was sentenced pursuant to the plea agreement to a term of five years imprisonment with forty-two months of parole ineligibility. (4T; Da3-5) Count 2 of the indictment and the disorderly persons complaint were dismissed pursuant to the plea agreement. (Da3-5; Da9) As a condition of the plea agreement, Barptelus preserved the right to appeal the court's order compelling a buccal swab. (Da7); See R. 3:9-3(f).

Barptelus filed a Notice of Appeal on May 16, 2024. (Da69-73)

STATEMENT OF FACTS

Elizabeth Police Officer John Maldonado was the sole witnesses to testify at the evidentiary hearing. (1T) On December 18, 2020, at around 11:00 p.m., Maldonado and his partner, Officer Michael Castro, were patrolling the area of Fairmount and Newark Avenue in Elizabeth in a marked patrol car when they noticed a white Toyota parked at a gas station. (1T8-24 to 8-7, 8-14 to 8-16, 8-25 to 9-10, 9-23 to 9-25) Maldonado testified this is a "high drug area," although he did not provide any basis for his characterization. (1T8-12 to 8-13) The officers noticed the Toyota due to what they thought to be heavily tinted windows. (1T8-25 to 9-4) They did not approach the car, however, and instead continued patrolling. (1T9-18 to 20) When the officers returned to the area, they again saw the white Toyota in traffic and got behind it. (1T9-20 to 10-3) The officers searched the car's license plate in the National Crime Information Center (NCIC) database which returned a possible outstanding warrant for the car's owner, M.P. (1T10-4 to 10-6) Based on this information, the officers initiated a traffic stop. (1T10-6 to 10-8) The stop was captured on Maldonado's body worn camera (BWC), and the footage was admitted into evidence at the suppression hearing. (Da74; 1T29-19 to 31-1)

Castro, approaching from the driver's side, ordered the driver to roll down all the windows while Maldonado approached from the passenger's side.

(1T10-11 to 10-16; Da74 04:05:41 to 04:06:00) There were five people in the car: the driver, M.P.; Barptelus, seated in the front passenger seat; and three passengers in the back seat including J.B. and B.B.[3] (1T10-20 to 11-1; Da74 04:06:05 to 04:06:20) Maldonado testified that upon approaching the car, he immediately smelled raw marijuana. (1T11-2 to 11-4) Castro informed P.M. that she may have an outstanding warrant. (1T11-14 to 11-17) P.M. responded that she had some issues in Orange but that it was resolved. (1T11-18 to 11-20)

Castro ordered P.M. to step out of the car and began questioning her. (1T12-8 to 12-16; Da74 04:07:15 to 04:07:30) Castro asked P.M. if there is anything illegal in the car to which she responded, "I don't know." (Da74 04:08:05 to 04:08:15) Castro then told P.M. that there is a strong odor of marijuana coming from inside the car and asked if she had any drugs in the car, to which P.M. responded "No." (Da74 04:08:15 to 04:08:30) When asked if there were any weapons in the car, she again answered there were not. (Da74 04:08:30 to 04:08:33) Finally, when asked if there was anything illegal in the car, she replied "Not that I know of." (Da74 04:08:33 to 04:08:38) Castro then told P.M. they were going to search her car. (D74 04:08:40 to 04:08:43)

[3] The fifth occupant was a minor and was not indicted with the other passengers.

After being questioned by Castro, P.M. spoke to Maldonado and told him that she did not know the other occupants in the car and that she was driving for Lyft and stopped at the gas station when Barptelus offered her money to give them a ride. (Da74 04:11:35 to 04:12:20; 1T14-1 to 14-12) Maldonado testified that P.M. lowered her voice and leaned in close to speak into his ear and appeared nervous. (1T14-1 to 14-15)

Officers began individually removing and searching the passengers. (1T15-15 to 15-18) No drugs or weapons were found on Barptelus or any other passenger. (1T16-16 to 17-19) When all the passengers were removed, Maldonado and Castro began a search of the interior of the car. (1T17-24 to 18-1) Maldonado and Castro can each be heard on the BWC footage commenting that there is a strong odor of marijuana. (Da74 04:22:55 to 04:23:02) Maldonado searched the front passenger side while Castro searched the front driver's side. (1T18-2 to 18-6) Maldonado testified that he and Castro would typically each search one half of the vehicle and then switch sides to double check each other's searches. (1T18-10 to 18-16)

Maldonado first found a cell phone on the floor. (1T19-19 to 19-20; Da74 04:23:30 to 04:23:35) Maldonado then recovered a glass vial of less than fifty grams of marijuana from underneath the passenger seat. (Da74 04:24:20 to 04:24:30; 1T19-20 to 20-3) The BWC footage captures Maldonado

commenting that "there's more here" as the smell is "too strong." (Da74 04:24:34 to 04:24:4) The officers did not uncover any additional marijuana despite repeatedly commenting on the strength of the odor and thoroughly searching both the rear passenger area and the trunk. (1T20-13 to 21-15)

When Maldonado finished searching the passenger side, Castro began his search and soon signaled to Maldonado that he found a handgun underneath the front passenger seat—the same area Maldonado found marijuana. (Da74 04:30:10 to 04:31:10; 1T23-13 to 23-23). Maldonado instructed Castro to "start locking everybody up." (Da74 04:30:25 to 04:30:32; 1T24-22 to 24-24) No other contraband was found in the vehicle or on the persons of any of the occupants. (1T24-14 to 24-18)

Maldonado testified that after they searched the car, they received confirmation that the information provided by the NCIC database was inaccurate and there was in fact no warrant for M.P., but rather for someone with a similar name. (1T27-16 to 27-22; 1T60-16 to 61-5) He explained that the "computer in the car sometimes is not updated with the most current information. This is why we always call [d]ispatch, and have the operators confirm . . . they have an active warrant." (1T28-8 to 28-11) Maldonado testified that in his five and a half years of experience, the computer had previously given incorrect information twice, including this occasion, and that

it happens "fairly often to different officers." (1T69-4 to 69-9) However, the officers did not contact dispatch to confirm the warrant, but rather proceeded to stop the car based on the potentially invalid warrant. (1T52-12 to 52-17) Maldonado testified their practice is to first stop to car to confirm the owner is the driver and then proceed with the stop, which will eventually include confirming the warrant is active. (1T53-23 to 54-1)

After hearing testimony and argument, the court denied defendants' motion to suppress. (Da13) The court first ruled the tinted windows did not justify a stop pursuant to State v. Smith, 251 N.J. 244 (2022). (Da26-28) However, the court found the stop was justified by the officers' reasonable belief that the vehicle's owner had an outstanding warrant. (Da28-31) The court credited Maldonado's testimony that the database is generally reliable and had only reflected inaccurate information on two occasions. (Da30) The court went on to find the search of the vehicle to be lawful under the automobile exception to the warrant requirement. (Da32-34)

On November 10, 2022, almost two years after Barptelus was arrested and nearly thirteen months after he was indicted, the State informed defense counsel it intended to seek DNA testing of the handgun and sought consent for buccal swabs of each defendant. (Da62; Da1) While defendant B.B. consented, the remaining defendants refused, and the court directed the State to file its

motion to compel. (Da62) On January 10, 2023, the Union County Prosecutor's Office Forensic Laboratory produced a report detailing DNA analysis of the handgun that found samples suitable for comparison. (Da62; Da49-51) On January 13, 2023, the State filed a motion to compel buccal swabs from defendants along with certifications from the county prosecutor and a detective. (Da47; Da41-44) On July 6, 2023, the court heard argument on the State's motion. (2T) The court granted the motion, finding it was supported by probable cause and that any delay in seeking the swab was justified by active plea negotiations. (Da59; Da64-68)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED BY DENYING THE SUPPRESSION MOTION BECAUSE IT IS UNREASONABLE TO INITIATE A TRAFFIC STOP BASED ON A POSSIBLE OUTSTANDING WARRANT BEFORE CONFIRMING THE WARRANT'S ACCURACY. (Da13-40)

The police engaged in an impermissible traffic stop of M.P.'s car in violation of state and federal constitutional protections. To justify the stop, officers relied on contents of a database they knew to contain inaccuracies. The officers therefore acted unreasonably in stopping the car before contacting dispatch to confirm the validity of the warrant. The resulting search of the car was thus conducted in violation of Barptelus' constitutional rights. Accordingly, the trial court should have suppressed the physical evidence that resulted from the search. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

An investigatory stop of an automobile constitutes a seizure and must be based on specific and articulable facts which, taken together with the rational inferences from those facts, give rise to a reasonable suspicion of criminal activity or a traffic offense. State v. Amelio, 197 N.J. 207, 211-12 (2008); Delaware v. Prouse, 440 U.S. 648, 653-55 (1979). Reasonable suspicion is defined as "a particularized and objective basis for suspecting a person stopped of criminal activity." State v. Pineiro, 181 N.J. 13, 22 (2004) (quoting State v.

Stovall, 170 N.J. 346, 356 (2002)). There must be "some objective manifestation that the person [detained] is, or is about to be engaged in criminal activity." Ibid. (quoting U.S. v. Cortez, 449 U.S. 411, 417-18 (1981)). When determining whether reasonable suspicion exists, a reviewing court must consider "the totality of the circumstances—the whole picture." State v. Nelson, 237 N.J. 540, 554 (2019) (quoting Stovall, 170 N.J. at 361). This determination is based on examining the facts available at the time of the encounter. State v. Alessi, 240 N.J. 501, 518, 520-21 (2020)

A police officer's mistake of fact will only justify a search or arrest if it is reasonable. While Article I, Paragraph 7 of the New Jersey Constitution provides "room . . . for some mistakes," the principle only applies when police behave "reasonably." State v. Sutherland, 231 N.J. 429, 437 (2018) (quoting State v. Handy, 206 N.J. 39, 54 (2011)). Moreover, when police obtain evidence through unconstitutional means, "our State Constitution does not contemplate good faith mistakes by law enforcement as an exception to the exclusionary rule." Id. at 436.

Here, police acted unreasonably under the circumstances by initiating a stop of M.P.'s car without confirming the validity of the warrant. As there was no outstanding warrant for M.P., there was no reason to stop her to execute a warrant. See State v. Shannon, 222 N.J. 576, 592 (2015) (3-3 decision) ("[A]n

invalid warrant cannot provide the basis for an objective and reasonable belief that probable cause to arrest exists; an arrest made under that standard is constitutionally defective."). However, a reasonable suspicion determination considers the totality of the circumstances and facts known to police at the time of the stop. See Alessi, 240 N.J. at 518, 520-21. While Maldonado testified he believed there was an outstanding warrant for M.P. and did not learn otherwise until they had left the scene, he also testified that he knew the database he relied on was not always accurate. (1T68-5 to 69-18) Specifically, Maldonado testified he personally recalled warrant information being inaccurate on two occasions, and that he was aware that it happens "fairly often to different officers." (1T68-19 to 69-9) Maldonado additionally testified officers "always call dispatch and have the operators confirm or deny they have an active warrant" because they know the information provided by the computer is not always accurate. (1T28-9 to 28-12) Knowing the warrant information the computer provides is inaccurate "fairly often" and must be confirmed by dispatch before they can make a lawful arrest, a reasonable officer would attempt to confirm the validity of the warrant before initiating a stop. Initiating a stop before receiving confirmation is unreasonable simply because the officer does not know if the warrant information is reliable and therefore if there is a legitimate reason for the stop.

The present case is distinguishable from State v. Pitcher, due to Maldonado's unreasonable behavior in failing to contact dispatch despite knowledge the computer is wrong fairly often. 379 N.J. 308 (App. Div. 2005) In Pitcher, police stopped a car based on Division of Motor Vehicle records that reported the owner's license was suspended. Id. at 311. The record of the defendant's suspension was later determined to be an error, and defendant argued the stop was unconstitutional because it was based on an "erroneous record." Id. at 313. Noting that when an officer relies on information provided by others "the question is the reasonableness of the officer's reliance on that information under the totality of the circumstances," the court held the officers acted reasonably under the circumstances known to them at the time. Id. at 319-320. The court explained there was no unreasonable conduct contributed to the error such as, for example, "the officer ignored information about the reinstatement of the license; other officers held back information about the reinstatement; or other officers delayed in providing information to the record keepers." Id. at 319. Additionally, there was no claim the DMV database was unreliable or that there were other instances of "troubling errors similar to the one in this case." Id. at 319.

The circumstances present in Pitcher are distinguishable because the police in this case acted unreasonably given the specific facts and knowledge

available to the officers. Unlike in Pitcher where there was no assertion officers had any reason to suspect the DMV database to be unreliable, Maldonado expressly testified that he knew the computer is not always accurate and that he was aware of previous instances of errors. Moreover, in Pitcher there was no unreasonable police conduct that contributed to the error, while here there was an unreasonable decision to rely on information known to be wrong at times rather than seek confirmation.

Evidence uncovered by the search should be excluded because the officers' decision to stop M.P.'s car was unreasonable and in violation of United States and New Jersey Constitutions. Once a constitutional violation has been established, an officer's good faith mistake does not justify an exception to the exclusionary rule under the New Jersey Constitution, which is frequently interpreted to afford defendants greater protections than the United States Constitution. Sutherland, 231 N.J. at 436. The exclusionary rule functions not only as a deterrent for police misconduct but also as "the indispensable mechanism for vindicating the constitutional right to be free from unreasonable searches." Shannon, 222 N.J. at 593 (quoting State v. Novembrino, 105 N.J. 95, 157 (1987)).

A more reasonable course of action—calling dispatch to confirm a warrant before initiating stop—would minimize unnecessary stops and

advance individuals' right to be free from unreasonable seizures. See State v. Johnson, 476 N.J. Super. 1, 20 (App. Div. 2023) ("[P]olice officers must use the least intrusive means necessary to effectuate the purpose of the investigative detention." (quoting State v. Chisum, 236 N.J. 530 (2019)).This places no additional burden on law enforcement, as Maldonado testified the warrant confirmation must be completed eventually. (1T28-10 to 28-13) Additionally, there is no suggestion here that there was any reason the stop could not wait for confirmation. The evidence recovered during the search of M.P.'s car should therefore be suppressed because the police acted unreasonably by stopping M.P.'s car without sufficient confirmation a warrant existed.

POINT II

THE TRIAL COURT ERRED BY GRANTING THE STATE'S MOTION TO COMPEL BUCCAL SWABS BECAUSE THE SIGNIFICANT DELAY IN SEEKING FORENSIC TESTING WAS UNREASONABLE. (Da60-68)

The court erred by granting the State's untimely and unfair motion to compel buccal swabs. The State's motion, filed over two years after defendants were indicted on December 19, 2020, was unnecessarily delayed and deprived Barptelus of his right to due process.

A buccal or cheek swab for the purposes of obtaining a DNA sample constitutes a search under the State and federal constitutions. State v. O'Hagen, 189 N.J. 140, 149 (2007). Whether a search is reasonable under the Fourth Amendment "depends on [sic] all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." Ibid. (quoting Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 619 (2007)). "The 'ultimate measure' of a governmental search is 'reasonableness,' which is assessed through a comparison of law enforcement needs with the individual's expectation of privacy and the depth of the intrusion." State v. Gathers, 449 N.J. Super. 265, 270 (App. Div. 2017), aff'd, 234 N.J. 208 (2018) (quoting Maryland v. King, 569 U.S. 435, 447 (2013)).

In Gathers, the defendant was charged with weapons possession offenses, and the trial court granted the State's request to compel a buccal swab in order to make a comparison to a firearm that was recovered. 449 N.J. Super. at 267-68. The Appellate Division reversed, first holding the State's hearsay certification by an assistant prosecutor who lacked personal knowledge of the case did not support a claim of probable cause for the search. Id. at 274, 269. However, it continued by holding that even if the court were to overlook the inadequacies of the State's submission, it would nonetheless conclude the search is unreasonable, "chiefly because of the timing of the

request" which came eight months after the alleged offense and five months after indictment. Id. at 268-270.

In its analysis, the court noted the "reasonableness of a search would be judged differently if sought at the time of arrest rather than . . . long after defendant's arrest." Id. at 270. Despite a buccal swab being a "very minor physical intrusion," there is nonetheless an accompanying "indignity" that is a relevant concern in assessing reasonableness. Id. at 271 (first quoting O'Hagen, 189 N.J. at 162, then quoting King, 569 U.S. at 464). "The indignity of being forced to provide a buccal swab while defendant—presumed innocent—resides in the county jail awaiting trial is a legitimate concern that should be weighed against the alleged governmental interest when court approval for such a search is sought." Id. at 271-272.

The New Jersey Supreme Court affirmed the Appellate Division's decision, holding the State's certification did not establish probable cause to justify the order to compel. Gathers, 234 N.J. at 224-225. Having found the State lacked sufficient probable cause, the court did not reach the additional grounds on which the Appellate Division based its reversal. However, the court did comment the "delay in administering the buccal swab affects the analysis relating to probable cause: although a buccal swab at the time of arrest or booking "does not increase the indignity already attendant to normal

incidents of arrest," we cannot presume the same for a swab nearly eight months after arrest, and five months after indictment." Id. at 222 (internal citation omitted) (quoting King, 569 U.S. at 461).

Here, the extensive delay in seeking a buccal swab from defendants renders the request patently unreasonable. The delay of more than two years from the alleged offense before the State motioned to compel swabs far exceeds the eight months in Gathers. While the Appellate Division had several reasons for reversal apart from the timeliness, it was explicit in its holding that "timing is everything." Id. at 272. The trial court erred by finding the significant delay was justifiable because the parties were "actively negotiating." As the factual record of Gathers was "quite limited" it is impossible to compare the actions of the prosecutors. Id. at 267. There is no reason to assume that parties were not actively negotiating in Gathers. Furthermore, there was no consideration as to why the State could not pursue forensics while negotiating with defendants. Therefore, the State's motion should have been denied. Because the court erred in granting the motion, the buccal swabs should be suppressed and Barptelus should be afforded the opportunity to withdraw his plea pursuant to Rule 3:9-3(f).

CONCLUSION

Barptelus' conviction must be reversed because the physical evidence recovered during the search of M.P.'s car should have been suppressed due to the unreasonable actions of police. Alternatively, the order compelling buccal swabs should be reversed because it is untimely, and the case should be remanded so that Barptelus may be afforded the opportunity to withdraw his plea pursuant to Rule 3:9-3(f).

Respectfully submitted,

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Dated: October 17, 2024

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-2794-23T5
Indictment No. 21-10-00646-I

STATE OF NEW JERSEY,	:	
Plaintiff-Respondent,	:	Criminal Action
v.	:	On Appeal from a Final Judgment of Conviction of the Superior Court
AKEEM M. BARPTELUS, A/K/A AKEEM BARPTELUS, A/K/A BARPTELUS	:	of New Jersey, Law Division, Union County.
Defendant-Appellant.	:	Sat Below: Hon. Candido Rodriguez, Jr., J.S.C.
	:	

REDACTED BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

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DATED: January 16, 2025

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COUNTER-STATEMENT OF PROCEDURAL HISTORY[1]

On October 13, 2021, a Union County Grand Jury returned Indictment No. 21-10-6461 charging defendant-appellant Akeem M. Barptelus and codefendants B.B., J.B., and M.P.[2] with second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1) (count one), and fourth-degree possession of a large capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3(j) (count two). (Da1 to 2). Defendant also was charged in a disorderly persons complaint for possession of a controlled dangerous substance, less than fifty grams of marijuana, in violation of N.J.S.A. 2C:35-10(a)(4). (Da3)

On February 28, 2022, co-defendant J.B. filed a Motion to Suppress evidence seized by police following a warrantless search of M.P.'s vehicle. (Da11). On March 5, 2022, defendant joined the motion. (Da15) On July 12, 2022, the Honorable Candido Rodriguez, Jr., J.S.C. held an

[1] Da refers to defendant's confidential appendix.
1T refers to the motion to suppress hearing dated July 12, 2022.
2T refers to the motion to compel buccal swab hearing dated July 6, 2023.
3T refers to the plea hearing dated December 11, 2023.
4T refers to the sentence hearing dated April 12, 2024.

[2] The co-defendants are referred to by their initials because it appears their charges were dismissed and records related to the incident expunged. See R. 2:6-1(a)(3); R. 1:38-3(c)(7).

evidentiary hearing. (1T). On August 23, 2022, the court issued a written opinion and order denying defendants' Motion to Suppress. (Da13; Da14 to 40).

On January 13, 2023, the State filed a Motion to Compel buccal swabs from defendants. (Da41 to 58). On July 6, 2023, the court heard oral argument and then granted the State's motion. (2T; Da59 to 68).

On December 11, 2023, defendant pleaded guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) (count one). (3T; Da6 to 12).

On April 12, 2024, defendant was sentenced pursuant to the plea agreement to a term of five years imprisonment with forty-two months of parole ineligibility. (4T; Da3 to 5). Count two of the indictment and the disorderly persons complaint were dismissed pursuant to the plea agreement. (Da3 to 5; Da9).

On May 16, 2024, defendant filed a Notice of Appeal on May 16, 2024. (Da69 to 73). This appeal follows.

COUNTER-STATEMENT OF FACTS

Motion to Suppress Facts:

On December 18, 2020, Elizabeth Police Officer John Maldonado was working as a patrolman and assigned to "12 Post," which included Newark Avenue and Fairmont Avenue. (1T6-9 to 8-11). At approximately 11:02 p.m., Officer Maldonado was patrolling the area with his partner Officer Castro, who was driving their patrol car. (1T8-14 to 19; 1T10-12). As they approached the intersection of Newark and Fairmont Avenue, their attention was drawn to a white Toyota with heavily tinted windows that was at the Shell gas station. (1T8-25 to 9-3; 1T9-23 to 25). The officers did not interact with the vehicle, but instead continued to patrol the area. (1T9-20).

Eventually, the officers observed the Toyota again, and they drove behind it. (1T9-20 to 22). The officers then ran the license plate for the vehicle and discovered there may have been an active warrant for the registered owner of the vehicle, M.P. (1T10-4 to 6; 1T11-5 to 13). Wanting to investigate whether the operator of the Toyota was the registered owner, the officers activated the lights and sirens of their patrol vehicle and conducted a motor vehicle stop. (1T10-6 to 8; 1T53-23 to 54-1).

Officer Castro advised the occupants of the vehicle to lower their windows. (1T10-13 to 14). Officer Maldonado then exited the vehicle from

the passenger's side and Officer Castro exited the vehicle from the driver's side. (1T10-11 to 12). As Officer Maldonado approached the Toyota, he observed five people: the driver, one passenger in the front seat, and three passengers in the rear passenger compartment. (1T10-20 to 11-1). Officer Maldonado also could smell the odor of raw marijuana as he approached the Toyota. (1T11-2 to 4).

After confirming the driver of the vehicle, M.P., was the owner of the vehicle, the officers asked her about the warrant. (1T11-5 to 17). She responded that "she had some issues in Orange, but that was taken care of." (1T11-18 to 20). The officers then contacting dispatch with the newly discovered information to determine if the warrant was still active. (1T11-21 to 12-1). While waiting for a response from dispatch, Officer Santos asked M.P. to exit the vehicle and move to the rear of the Toyota. (1T12-13 to 16).

M.P. was "nervous, a little shaky." (1T12-17 to 21). The officers asked M.P. if there were any weapons in the car and she stated, "No." (1T13-4 to 8). They then asked her about the smell of marijuana and asked if there was anything illegal in the car. (1T13-9 to 14). She responded, "Not that I know of." (1T13-12 to 16). However, Officer Maldonado could still smell marijuana emanating from the interior of the vehicle. (1T13-17 to 22).

Officer Maldonado then questioned M.P. (1T13-23 to 25). M.P. told Officer Maldonado why she went to the gas station, but then explained that she did not know the individuals in the vehicle and that the front seat passenger had offered her money to take the passengers to a location. (1T14-1 to 9). M.P. told this to Officer Maldonado in a hushed tone and appeared nervous. (1T14-2 to 18). Additionally, while Officer Maldonado was speaking to M.P., an individual who had been loitering at the gas station suddenly appeared and attempted to cause a distraction. (1T14-19 to 15-1). Unsure if M.P. was being truthful or held without her consent, Officer Maldonado moved her to his patrol car and secured her in the vehicle, uncuffed. (1T15-10 to 14).

A request for backup was made and four other patrol cars arrived. (1T15-24 to 16-4). The other occupants were removed from the vehicle, a protective pat down was conducted, and each person was placed in the back of a patrol car. (1T15-15 to 18). The officers then searched the vehicle. (1T17-20 to 18-1).

Officer Maldonado began his search at the front passenger area. (1T19-14 to 17). There, he discovered a cellphone on the front seat passenger floorboard. (1T19-18 to 20). Officer Maldonado then checked underneath the seat and discovered a vial containing marijuana that was located underneath the adjustment bar for the front seat. (1T19-20 to 20-12).

Officer Maldonado continued to smell marijuana, so he continued his search of the vehicle. (1T20-13 to 18). He then searched the rear of the cabin area, where the odor remained and smelled stronger. (1T20-19 to 21-20). Officer Maldonado did not find any contraband in the rear seat area, and the search continued. (1T20-21 to 24).

Officer Maldonado and Officer Castro switched sides and Officer Maldonado began to search the front driver's side. (1T22-9 to 15). While Officer Maldonado searched the front driver's side, Officer Castro searched the front passenger's side. (1T22-21 to 23-17). Officer Castro then signaled that he located a gun underneath the seat. (1T23-18 to 23). Officer Maldonado reached underneath the passenger seat from the front driver's side and located the handgun, which was located far back underneath the front passenger's seat. (1T23-24 to 24-13).

The search of the vehicle continued, but no additional contraband was found. (1T24-14 to 18). All of the occupants of the vehicle were then handcuffed. (1T24-22 to 24). The occupants were then Mirandized and stated that they did not know anything about the items that were discovered. (1T25-8 to 21).

Thereafter, the occupants were taken to headquarters. (1T26-9 to 14). When they arrived at headquarters, defendant, who was the front seat

passenger of the Toyota, asked about his cellphone and admitted it was the one located on the floor of the front seat. (1T26-15 to 27-11). Eventually, Officer Castro went upstairs, spoke with the dispatch operators, obtained paperwork related to the warrant, and confirmed there was no active warrant against this M.P. (1T27-12 to 22; 1T68-14 to 18).

Plea Facts:

Defendant admitted that he was a passenger in a motor vehicle that was driving in the city of Elizabeth on December 18, 2020. (3T24-18 to 21). He further admitted that the motor vehicle was stopped in the area of Newark and Fairmont Avenue and searched. (3T24-22 to 25-9). Defendant further admitted that a handgun was located underneath the seat that he was occupying, he did not have a permit in the State of New Jersey to possess the handgun, he knew it was illegal to possess the handgun, and that the handgun was in fact his. (3T25-6 to 21). Defendant also acknowledged there was a report that indicated his DNA was found on the firearm. (3T25-22 to 26-2).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS BECAUSE THE OFFICER LAWFULLY SEIZED THE TOYOTA TO INVESTIGATE THE WARRANT. (Da13 to 40).

Defendant claims the trial court erred by denying his Motion to Suppress because it was unreasonable for the officers to initiate a traffic stop before confirming whether the information in the mobile data terminal, which indicated the registered owner of the Toyota had an active warrant, was accurate. Defendant's claim is without merit. The trial court properly found the officers in this case acted reasonably by relying upon the information in the mobile data terminal to temporarily seize the Toyota so the officers could investigate the accuracy of that information. Although the officers subsequently learned that M.P. did not have an active warrant, that does not change the reasonableness of the officers' actions. Therefore, the trial court correctly denied defendant's Motion to Suppress. This finding is amply supported by the facts and by case law. Accordingly, it should not be disturbed on appeal.

Appellate review of a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). "[A]n appellate court reviewing a motion to suppress

must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007) (quotation omitted). See also State v. Slockbower, 79 N.J. 1, 13 (1979) (concluding that "there was substantial credible evidence to support the findings of the motion judge that the . . . investigatory search [was] not based on probable cause"); State v. Alvarez, 238 N.J. Super. 560, 562-64 (App. Div. 1990) (stating that standard of review on appeal from motion to suppress is whether "the findings made by the judge could reasonably have been reached on sufficient credible evidence present in the record" (citing State v. Johnson, 42 N.J. 146, 164 (1964))). Deference is given to those findings because 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." Id. 192 N.J. at 244.

Moreover, "[a]n appellate court should not disturb the trial court's findings merely because 'it might have reached a different conclusion were it the trial tribunal' or because 'the trial court decided all evidence or inference conflicts in favor of one side' in a close case." Elders, 192 N.J. at 244 (quoting Johnson, 42 N.J. at 162). "The governing principle, then, is that '[a] trial court's findings should be disturbed only if they are so clearly mistaken that the interests of justice demand intervention and correction.'" State v.

Robinson, 200 N.J. 1, 15 (2009). (alteration in original) (quoting Elders, 192 N.J. at 244). A trial court's legal conclusions, however, "and the consequences that flow from established facts," are reviewed de novo. State v. Hubbard, 222 N.J. 249, 263 (2015).

Here, the trial court's factual findings were amply supported by the record and the court's legal conclusions similarly were supported by precedent. As such, neither should be disturbed on appeal. Thus, defendant's appeal should be denied and his conviction should be affirmed.

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A motor vehicle stop by a police officer, no matter how brief or limited, is a "'seizure' of 'persons'" under both the Federal and State Constitutions. State v. Scriven, 226 N.J. 20, 33 (2016) (quoting State v. Dickey, 152 N.J. 468, 475 (1998)). To justify such a seizure, "a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense." Id. 226 N.J. at 33-34.

"The suspicion necessary to justify a stop must not only be reasonable, but also particularized." Id. 226 N.J. at 37. An investigative stop "may not be

based on arbitrary police practices, the officer's subjective good faith, or a mere hunch." State v. Chisum, 236 N.J. 530, 546 (2019) (quoting State v. Coles, 218 N.J. 322, 343 (2014)).

To determine whether reasonable and articulable suspicion exists, a court must evaluate the totality of the circumstances and "assess whether 'the facts available to the officer at the moment of the seizure . . . warrant[ed] a [person] of reasonable caution in the belief that the action taken was appropriate.'" State v. Alessi, 240 N.J. 501, 518 (2020) (alterations and omission in original) (quoting State v. Mann, 203 N.J. 328, 338 (2010)). A motor vehicle stop that is not based on a "reasonable and articulable suspicion is an 'unlawful seizure,' and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." Chisum, 236 N.J. at 546 (quoting State v. Elders, 192 N.J. 224, 247 (2007)).

Here, as the trial court properly found, the motor vehicle stop at issue was lawfully based on the officer's reasonable and articulable suspicion that the driver of the Toyota had an active warrant for her arrest. Indeed, it cannot be disputed that the officers' conduct would have been lawful if the warrant in this case was valid, and common sense dictates that a warrant is supported by probable cause. Thus, had the warrant been valid, its existence in the mobile

data terminal provides not only reasonable and articulable suspicion to investigate, but probable cause to arrest.

Although it was subsequently determined that the warrant was not for this M.P., the officers' reliance on that mistake of fact and their overall conduct in this case, nevertheless, was reasonable. A police officer's objectively reasonable mistake of fact does not render a search or arrest unconstitutional. State v. Sutherland, 231 N.J. 429, 437 (2018). Consistent with federal jurisprudence, the New Jersey Supreme Court has held that Article I, Paragraph 7 of the New Jersey Constitution provides "room . . . for some mistakes [by police]." State v. Handy, 206 N.J. 39, 54 (2011) (second alteration in original) (quoting Illinois v. Rodriguez, 497 U.S. 177, 186 (1980)). However, that principle applies only when "the police . . . behave[] reasonably." Ibid.; see also State v. Green, 318 N.J. Super. 346, 352-53 (App. Div. 1999) (holding reasonable but mistaken belief leading to arrest did not warrant suppression). Officer Maldonado's and Officer Castro's reliance on the warrant in the mobile data terminal was reasonable and, therefore, the trial court properly found that their investigatory detention was valid.

As the trial court correctly noted, Officer Maldonado testified that through his five-year career as a police officer, this was only the second instance where his mobile data terminal reflected inaccurate information.

(Da30; 1T68-14 to 69-9). In light of the infrequency of errors in the system, the officer's reliance on that information for purposes of a limited detention to investigate its accuracy was reasonable. Indeed, Officer Maldonado credibly testified that he stopped the Toyota to investigate the validity of the warrant and not simply to arrest the driver. Indeed, as Officer Maldonado also stated, they could not simply arrest someone without confirming the accuracy of the information in the mobile data terminal. (1T51-5 to 52-11). Thus, as Officer Maldonado testified, it was necessary to stop the vehicle to confirm the driver was the registered owner, in case the warrant was valid. (1T53-19 to 54-1). Accordingly, the trial court's finding that the officers acted reasonably is supported by the record.

Defendant nevertheless claims the exclusionary rule should apply because the officers should have been required to confirm the validity of the search warrant before conducting the motor vehicle stop. Defendant's claim is without merit. A police officer has the duty to investigate suspicious behavior. See State v. Davis, 104 N.J. 490, 502 (1986). If the officers had ignored this information and failed to investigate the warrant, they would have been derelict in their duty. See State v. Gray, 59 N.J. 563, 568 (1971) (stating that police forswear their duties if they do not investigate suspicious behavior); State v. Dilley, 49 N.J. 460, 468 (1967) (noting that investigation of suspicious

circumstances "dictated by elemental police responsibilities"); State v. Letts, 254 N.J. Super. 390, 396 (Law Div.1992) (stating that police have duty to public to investigate behavior that suggests criminal activity). Although the officers did not investigate in the manner defendant wishes, that does not mean their actions were unreasonable. Such a claim is premised upon hindsight, which is the very type of analysis that is frowned upon. See State v. Watts, 223 N.J. 503, 514 (2015) ("The test is not whether there were other reasonable or even better ways to execute the search, for hindsight and considered reflection often permit more inspired after-the-fact decision-making" (citing State v. Hathaway, 222 N.J. 453, 469 (2015)).

Indeed, it would have been unreasonable to let the Toyota continue to drive while the officers contacted dispatch to confirm the accuracy of the information in their mobile data terminal and wait for a response. To do so would ignore the inherent exigency associated with vehicles. See State v. Witt, 223 N.J. 409 (2015). Stated differently, if the officers did not stop the Toyota, they may have lost the vehicle or it may have driven to an unsafe location to conduct a motor vehicle stop. Instead, by stopping the vehicle when they did, they were able to control the situation, stop the Toyota in a safe location, and investigate. The limited intrusion in the defendants' freedom of movement is far outweighed by the officers need to investigate in a safe

manner. Thus, contrary to defendant's claim, the officers were not, and should not be, obligated to confirm the accuracy of the warrant before stopping the Toyota.

Finally, the State notes that the officers in this case did not arrest M.P., defendant, or any of the occupants based on the mistaken fact. The mistaken fact was utilized for a brief, limited, investigatory detention. The stop only led to an arrest because the officers smelled marijuana, which provided probable cause to search the vehicle.[3] Only after the marijuana and a firearm was found was defendant arrested. Thus, the mistake of fact in this case led to a minimal intrusion and, therefore, it is clear that the officer's conduct was reasonable.

Indeed, this case is very similar to State v. Pitcher, 379 N.J. Super. 308 (App. Div. 2005). In Pitcher, officers checked the license plate number of the defendant's vehicle and the mobile data terminal showed that the license of the registered owner was suspended. Id. at 312. It subsequently determined that the information was incorrect. Id. at 313. The defendant argued denial of his motion to suppress would require a "good faith" exception to the exclusionary rule. Id. at 316. The appellate division rejected defendant's argument. Id. at

[3] The stop in this case occurred in December 2020, when possession of marijuana was unlawful. CREAMMA took effect on February 22, 2021, and does not apply retroactively. State v. Cohen, 254 N.J. 308, 328 (2023).

316 to 321. The court found that the defendant did not allege the motor vehicle data base was unreliable or claim that troubling errors similar to the one in his case were commonplace or a matter of indifference to those responsible for providing, recording and maintaining the data. Id. at 319. The court also noted that there was no assertion that unreasonable conduct related to the investigation of criminal activity contributed to the error. Ibid. Additionally, the court recognized that nothing suggested "the officer ignored information about the reinstatement of the license; other officers held back information about the reinstatement; or other officers delayed in providing information to the record keepers." Ibid. Accordingly, the appellate division focused on whether the officer acted reasonably under the totality of the circumstances known to him at the time of the motor vehicle stop by relying on an articulable fact, the license suspension and it agreed with the trial judges who considered the circumstances and concluded that this officer's conduct was reasonable.

Although defendant challenges the reliability of the information in the mobile data terminal in this case, that challenge, which was rejected below and should be deferred to on appeal, should similarly be rejected by this court. As previously stated, the trial court aptly recognized that Officer Maldonado testified the information in his mobile data terminal was only inaccurate twice

in his five-year career. Even though the officer acknowledged other officers also have received inaccurate information from the system, that does not negate its general, overwhelming reliability. Thus, this Court should reach a similar conclusion as that reached in Pitcher: the officer's conduct was reasonable.

In sum, Article I, paragraph 7 of the New Jersey Constitution "does not speak in absolute terms but strikes a balance between the interests of the individual in being free of police interference and the interests of society in effective law enforcement." State v. Dilley, 49 N.J. 460, 468 (1967). In determining the reasonableness of the seizure, courts therefore weigh the public interest served against the nature and scope of the intrusion upon the individual. State v. Davis, 104 N.J. 490, 502-03 (1986). Weighing the limited intrusion of the temporary motor vehicle stop that occurred in this case, against the great public interest served by investigating, and potentially executing, a warrant, it is clear that the officers' conduct in this case was reasonable. As such, the trial court properly denied defendant's Motion to Suppress.

POINT II

THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION TO COMPEL BUCCAL SWABS. (Da60 to 68).

Defendant claims the trial court erred in granting the State's Motion to Compel buccal swabs from the defendants because it was unreasonable to seek forensic testing so long after the defendants were indicted. Defendant's claim is without merit. The trial court aptly reviewed the State's submission and found it was supported by probable cause. The trial court also correctly determined the delay in testing was not unreasonable. As such, the trial court properly granted the State's motion. The court's ruling is supported by the record and, therefore, it should be affirmed on appeal.

A buccal swab is a common method of law enforcement collection of specimen material for DNA testing, but, it is also beyond dispute that the taking of a buccal swab for the purposes of obtaining a DNA sample is a "search." State v. O'Hagen, 189 N.J. 140, 149 (2007) (citing Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 616-17 (1989); accord State v. Gathers, 234 N.J. 208, 221(2018). And because a buccal swab constitutes a search, it must be obtained in a manner consistent with constitutional search and seizure principles for valid use in a criminal prosecution. State v. Camey, 239 N.J. 282, 299-300 (2019).

"Whether a search is reasonable under the Fourth Amendment 'depends on . . . all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.'" O'Hagen, 189 N.J. at 149 (quoting Skinner v. Ry. Labor Execs.' Ass'n, 489 U.S. 602, 619 (1989)). In conducting a reasonableness analysis, a court must balance the "intrusion on the individual's Fourth Amendment interests against [the] promotion of legitimate governmental interests." Skinner, 489 U.S. at 619 (quoting Delaware v. Prouse, 440 U.S. 648, 654 (1979)). "Generally, 'we strike this balance in favor of the procedures described by the Warrant Clause of the Fourth Amendment,'" O'Hagen, 189 N.J. at 149 (quoting Skinner, 489 U.S. at 619), which provides that "no Warrants shall issue except upon probable cause, supported by Oath or affirmation," U.S. Const. amend. IV; accord N.J. Const. art. I, ¶ 7. "Except in certain well-defined circumstances, a search or seizure . . . is not reasonable unless it is accomplished pursuant to a judicial warrant issued upon probable cause." Skinner, 489 U.S. at 619.

One means for obtaining a buccal swab is to utilize judicial authority to compel a suspect to submit to an investigative detention, which is the functional equivalent of an application for issuance of a search warrant. See State v. Hall, 93 N.J. 552, 557-59 (1983) (recognizing judicial authority to authorize investigative detentions founded on the Judiciary's constitutional

authority governing search and seizure). Taking a lead from the United States Supreme Court in Davis v. Mississippi, 394 U.S. 721, 727-28 (1969), our Court concluded that for certain detentions, which are minimally intrusive, produce reliable evidence, and can be effected without abuse, coercion or intimidation, the proofs required for an investigative detention order need not rise to probable cause. Hall, 93 N.J. at 561-62; accord In re Alleged Aggravated Sexual Assault of A.S., 366 N.J. Super. 402, 409-10 (App. Div. 2004).

Court Rules now formalize the guidelines for issuance of an order for investigative detention to compel lineups, fingerprinting, and other minimally intrusive identification procedures. See State v. Rolle, 265 N.J. Super. 482, 486 (App. Div. 1993). Pursuant to Rule 3:5A-1, investigative detention orders can compel a defendant to submit to non-testimonial identification procedures for the purpose of obtaining evidence of that person's physical characteristics. Rule 3:5A-4 provides the substantive standards for issuance of such an order:

An order for an investigative detention shall be issued only if the judge concludes from the application that:

> (a) a crime has been committed and is under active investigation, and
> (b) there is a reasonable and well-grounded basis from which to believe that the person sought may have committed the crime, and

> (c) the results of the physical characteristics obtained during the detention will significantly advance the investigation and determine whether or not the individual probably committed the crime, and
> (d) the physical characteristics sought cannot otherwise practicably be obtained.
>
> [R. 3:5A-4.]

As applied to DNA, in order to establish the results of the physical characteristics obtained would significantly advance the investigation and determine whether or not the individual probably committed the crime, the State must know that a DNA sample from a suspect was recovered from the item at issue and that it is a sufficient and viable sample for the laboratory to test against. See State v. Gathers, 234 N.J. 208, 224 (2018). Moreover, in a case like this, the State must show probable cause. Id. at 225.

Notably, these rules do not set forth a time frame during which the State must seek a Court Order. Rather, they address the standard of proof necessary to issue such an order. As the trial court aptly found, the State's motion was supported by probable cause and, therefore, the trial court properly granted the State's motion.

A crime undoubtedly was committed because a firearm was found underneath the passenger's seat of the Toyota. Not only was there reasonable and articulable suspicion that defendant committed the crime, there was

probable cause, because he was seated in the passenger's seat of the Toyota and his cellphone was recovered from the floorboard of the passenger's side, a small distance from where the firearm was located. Knowing whether defendant's DNA matched the sample that was recovered from the firearm would significantly advance the investigation and assist in establishing whether or not the defendants committed the crime. And, there was no other mechanism by which to obtain defendant's DNA. Thus, the trial court properly granted the State's motion.

Relying upon the Appellate Division's ruling in State v. Gathers, 449 N.J. Super. 265, 270 (App. Div. 2017), defendant nevertheless claims the trial court erred because the delay in seeking defendant's DNA was unreasonable. Defendant's reliance upon the Appellate Division's ruling is misplaced, and his claim is without merit. In Gathers, the defendant was charged with second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4, second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b), and fourth-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(a). Gathers, 449 N.J. Super. at 267. Eight months after the incident occurred and five months after indictment, the State sought, and was granted, an order authorizing a buccal swab. Ibid. The affidavit in support of the motion did not establish probable cause in support of the request and, thus, the Appellate

Division reversed the trial court's order. Id. at 269 (emphasis added).

In reaching its decision, the Appellate Division also found that the order was unreasonable because of the timing of the request and, importantly, because of the information the State already possessed. Id. at 270 to 273. Specifically, the Appellate Division noted that the State had accesses to defendant's DNA in CODIS[4] and could have compared that to the DNA on the weapon, but "[t]he State, however, chooses not to connect the available dots. It prefers to intrude into defendant's mouth for additional DNA so that it may wrap up all its potential evidence in one neat package for its laboratory personnel." Id. at 273. Finding the State did not need defendant's DNA, the Appellate Division ruled the State's request was unreasonable. Id. at 274.

Although the Supreme Court affirmed the Appellate Division's ruling because the State's affidavit failed to provide probable cause in support of its

[4] This technically is inaccurate because, as the Supreme Court subsequently noted, "the NDIS Manual § 3.1.1.2 sets forth limitations and practices in the use of CODIS and provides that DNA samples related to possessory offenses are generally not eligible for upload in CODIS. Furthermore, according to the State Office of Forensic Sciences' Crime Gun DNA Swabs & DNA Analysis Submission Guidelines, a DNA swab will not be taken from a gun which is not CODIS eligible. State of New Jersey Office of Forensic Sciences, Crime Gun DNA Swabs & DNA Analysis Submission Guidelines (2016), http://www.njsp.org/division/investigations/pdf/ofs/gun_swab_policy.pdf." State v. Gathers, 234 N.J. 208, 224 (2018). Thus, the State could not have "connected the dots."

application, it did not find the timing of the request to be fatal. State v. Gathers, 234 N.J. 208, 222 (2018). Rather, the Court found that the delay required the State to establish probable cause that the evidence would be found, which the State had failed to do. Ibid. Stated differently, the delay in seeking the buccal swab increased the invasion of one's expectation of privacy and, therefore, it increased the State's burden of proof. However, the delay did not preclude the State from seeking a swab months, or even years, after an incident occurs or an indictment is returned.

As the Supreme Court stated:

> The delay in administering the buccal swab affects the analysis relating to probable cause: although a buccal swab at the time of arrest or booking "does not increase the indignity already attendant to normal incidents of arrest," id. at 464, we cannot presume the same for a swab nearly eight months after arrest, and five months after indictment. For that reason, the government's interest in obtaining a buccal swab in furtherance of the investigation or prosecution of defendant requires that probable cause be demonstrated. We therefore consider whether the affidavit, which was the sole support for the order to compel the swab in this case, sufficed to establish probable cause.
>
> [Ibid. (emphasis added)]

As this language clearly sets forth, a delay in administering the buccal swab affects the probable cause analysis, it does not prevent the State from seeking a buccal swab. Thus, defendant's claim is without merit.

However, even assuming the timing of the request mattered to the degree defendant contends, this Court should still deny his argument because the trial court properly found the delay in this case was not unreasonable due to the procedural history of the case. Defendant was indicted on November 8, 2021. (Da1 to 2; Da15; 2T9-7 to 8). Defendant J.B. filed a Motion to Suppress on February 28, 2022. (Da15). Defendant joined on March 5, 2022. Ibid. The trial court denied the Motion to Suppress on August 23, 2022. (Da13 to 40). However, if it had been granted, it would have negated the need for DNA testing. Thereafter, one of the defendants sought a Graves waiver and if that co-defendant had accepted the plea, it would have negated the need for DNA testing; however, the co-defendant ultimately rejected the plea. While that was pending, on November 10, 2022, the State notified counsel that it intended to seek DNA testing of the firearm to see if there was comparable DNA. (2T9-20 to 23). On January 12, 2023, only after determining comparative DNA existed, did the State seek to compel buccal swabs. (Da41 to 57). The State was not idly sitting on its hands, but rather was actively litigating the matter. Thus, although the length of time between the incident and indictment and the

motion to compel was lengthy, it was not unreasonable. Accordingly, the trial court properly granted the State's motion to compel a buccal swab.

CONCLUSION

For the foregoing reasons, defendant's appeal is without merit and, therefore, the State respectfully requests that defendant's conviction and sentence be affirmed.

Respectfully submitted,

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January 27, 2025

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2794-23
INDICTMENT NO. 21-10-0646-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from an Order of the Superior Court of New Jersey,
v.	:	Law Division, Union County.
AKEEM M. BARPTELUS, A/K/A AKEEM BARPTELUS, A/K/A BARPTELUS,	:	Sat Below: Hon. Candido Rodriguez, Jr., J.S.C.
Defendant- Appellant.	:	

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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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Akeem M. Barptelus relies on the procedural history and statement of facts set forth in his opening brief.[1]

LEGAL ARGUMENT

Barptelus relies on all the legal arguments raised in his opening brief. He adds the following.

POINT I

DEFENDANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED BECAUSE THE STOP OF M.P.'S CAR WAS UNREASONABLE.

The stop of M.P.'s car was unreasonable because, notwithstanding the database error that returned an active warrant, there was never any existing justification for her arrest and therefore no reasonable suspicion to stop. As such, the trial court should have granted defendants' motion to suppress. The State's reliance on State v. Pitcher is misplaced, as the circumstances in Pitcher are distinguishable from those present here. 379 N.J. Super. 308 (App.

[1] Barptelus retains the abbreviations and transcript designations used in his opening brief and adds the following:
Db = defendant's appellant brief
Sb = State's respondent brief

Div. 2005); see State v. Nyema, 249 N.J. 509, 528 (2022) ("Determining whether reasonable and articulable suspicion exists for an investigatory stop is a highly fact-intensive inquiry . . . .").

The Pitcher court noted the facts before it—a stop based on "mistaken inclusion of, or failure to timely delete, a record of license suspension in data accessible to law enforcement"— were distinguishable from cases involving invalid warrants because a license suspension is simply "one articulable fact" that goes into a reasonable suspicion or probable cause analysis, whereas a warrant is "a determination about the justification for a stop or arrest." Pitcher, 379 N.J. Super. at 318. As such, the Pitcher court itself acknowledges its holding is not applicable to the present facts in which the only basis to stop the car was the invalid warrant and there was no reasonable suspicion of a motor vehicle violation.

Rather, State v. Shannon is more instructive. 222 N.J. 576. In Shannon, the defendant was approached by police responding to a report of a suspicious vehicle and subsequently arrested when a warrant check returned an active warrant that should have been vacated but was not due to an oversight by a municipal court administrator. Id. at 579-580. Just as it does here, the State argued that officers are permitted to rely on erroneous database information to substantiate a stop or arrest. Id. at 583. The Supreme Court held the "officer's

belief, even in good faith, that a valid warrant for defendant's arrest was outstanding cannot render an arrest made absent a valid warrant or probable cause constitutionally compliant." Id. at 591 (LaVecchia, J., concurring).

Here, as the State concedes, there was ultimately never any existing justification for the stop as police later confirmed there was never an active warrant for M.P. (SB7; 1T27-12 to 22; 1T68-14 to 18). The record does not fully reveal how the database came to indicate there was a warrant for M.P., only that she "was not the [M.P.] that had an active warrant."[2] (1T 27-21 to 27-22). Despite a non-existent warrant, the State argues that by stopping M.P. the officers were simply performing their "duty to investigate suspicious behavior."[3] (Sb13) However, even though Shannon dealt with an arrest rather than an investigatory stop, to decline to apply the Shannon court's reasoning here where police are all the same relying on a non-existent warrant is to nonetheless effectively apply the good-faith exception—a doctrine which has

[2] While the specific nature of the error is unknown, this court has previously held suppression is required following an arrest based on a warrant that should have been vacated but was not due to an administrative error, and that to do otherwise would be to apply the "good faith" exception. State v. Moore, 260 N.J. Super. 12, 13-14; 16-17 (App. Div. 1992).

[3] The State does not identify any specific suspicious behavior on behalf of M.P. or the passengers. Rather, the officers only learned of the warrant, the sole reason for the stop, after deciding to manually check the car's license plate in the database. (1T 50-11 to 50-21). There was no testimony as to why the officers decided to run the plate.

repeatedly been rejected by New Jersey courts. See State v. Novembrino, 105 N.J. 95, 157-59 (1987). In the absence of any exigency or even heightened suspicion of danger, the officers had a simple responsibility to confirm the warrant's validity before conducting a stop. As such, the stop was unreasonable and the evidence obtained as a result must be suppressed.

CONCLUSION

For the reasons stated in Point I of his opening brief and this reply brief, Barptelus' convictions should be reversed. Alternatively, for the reasons stated in Point II of Barptelus' opening brief, the conviction should be vacated and the matter should be remanded so that Barptelus may be afforded the opportunity to withdraw his plea pursuant to Rule 3:9-3(f).

Respectfully submitted,

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