WILLIAM A. DANIEL
Prosecutor of Union County
32 Rahway Avenue
Elizabeth, New Jersey 07202-2115
(908) 527-4500
Attorney for the State of New Jersey

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No.: A-3573-24 (AM-000547-24)
Ind. No.: 24-12-01259

STATE OF NEW JERSEY,	:	
Plaintiff-Appellant,	:	Criminal Action
v.	:	On Leave to Appeal from an Order of the Superior Court
JAVANTE J. DORISME,	:	of New Jersey, Law Division, Union County, Granting Defendant's
Defendant-Respondent.	:	Motion to Suppress.
	:	Sat Below: Hon. Anthony J. Parenti, Jr., J.S.C.

AMENDED BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

MICHELE C. BUCKLEY
Assistant Prosecutor
Of Counsel and on the Brief
Attorney ID No. 049301992

michele.buckley@ucpo.org

DATED: September 02, 2025

TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED

INDEX TO APPENDIX VOL. I

TABLE OF CASES

Page

FEDERAL OPINIONS

NEW JERSEY STATE OPINIONS

STATUTES CITED

OTHER SOURCES CITED

STATEMENT OF PROCEDURAL HISTORY[1]

On July 2, 2024, defendant, Javante J. Dorisme, was charged under Complaint-Warrant No. 2024-000682-2019, with one count of second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(b)(1) (count one); and, one count of fourth-degree unlawful possession of a large capacity magazine, contrary to N.J.S.A. 2C: 39-3(j) (count two). (Sa1 to 2). On July 8, 2025, the Honorable Anthony J. Parenti, Jr., J.S.C., denied the State's motion to detain defendant pre-trial. On December 18, 2024, a Union County Grand Jury returned Indictment No. 24-12-01259, charging defendant with the same charges contained in the complaint. (Sa11 to 12).

On March 10, 2025, defendant filed a Motion to Suppress physical evidence seized pursuant to a warrantless search. (Sa13 to 14). After the filing of briefs by both parties, Judge Parenti conducted an evidentiary hearing on May 23, 2025. (1T).

On June 2, 2025, the trial court issued a written opinion and order granting defendant's motion. (Sa15; Sa27). The State's Motion for Leave to Appeal the trial court's order follows.

---

[1] Sa refers to the State's appendix.
1T refers to the Motion to Suppress Hearing transcript, dated May 23, 2025.

STATEMENT OF FACTS

On July 1, 2024, Sergeant Michael DePinho and Officer Ryan O'Grady were patrolling the area of Vauxhall Road in Union Township after a report of an attempted motor vehicle burglary. (1T5-6 to 24; 1T8-19 to 9-4). At approximately 10:30 p.m., Sergeant DePinho observed a black Hyundai Sonata in the area of Route 22 East and Vauxhall Road. Sergeant Pinho observed the vehicle to be driving without license plates (no displayed registration). Sergeant DePinho conducted a motor vehicle stop of the Hyundai Sonata, which did not stop right away but pulled over into a Wawa convenience store located off Vauxhall Road about a minute later. (1T7-13 to 20; 1T7-10 to 15). Sergeant DePinho called in the stop and two minutes later, Officer O'Grady arrived as back-up in the investigation, which was occurring in the parking lot of a Wawa convenience store. (1T8-7 to 23).

The Hyundai Sonata was occupied by two individuals sitting in the front seats of the car; the driver was identified as Gene Howard, and the passenger as defendant, Javante Dorisme. (1T9-8 to 10; 1T9-11 to 13). Sergeant DePinho approached the driver's side of the vehicle, and advised the driver he was stopping him for not having license plates on the car. (Sa28; Body Worn Camera footage of Sergeant DePinho admitted into evidence as S-1 at the hearing, timestamp at 2:20). The driver then retrieved the license plates from

the passenger seat floor before being ordered to step out of the vehicle. (Sa28; S-1 at 02:20-02:27). The driver complied and stated that they had just taken the plates off. Ibid. The driver also claimed ownership of the car, though he later stated the car actually belonged to his younger brother, Quinton McDonald. (Id. at 03:35, 4:45). Mr. Howard advised Sergeant DePinho that he had a valid driver's license but did not have it with him. (Id. at 6:18).

When Officer O'Grady arrived at the scene, he approached the passenger side of the car and observed that defendant was sitting in the front passenger seat and was not wearing a seatbelt. Officer O'Grady also observed that the car had no exterior door handles. (1T9-22 to 24). Officer O'Grady asked defendant if he had identification, which defendant presented on his cell phone. (1T10-2 to 6). Officer O'Grady observed that defendant had a black book bag under his feet and appeared to be concealing it with his leg. (1T10-6 to 15). Officer O'Grady then asked defendant to step out of the car and step to the rear of the vehicle. (1T11-1 to 5). Defendant told Officer O'Grady that he and Mr. Howard were coming from Newark to the Wawa gas station to get gas and then were going back to Newark. Defendant told Officer O'Grady that the driver was his brother. (1T11-6 to 12).

Officer O'Grady then went to speak with Mr. Howard. Mr. Howard said that the passenger was his friend. After getting his personal information, the

officer asked why the plates were not on the car. Mr. Howard responded that they "just took the plates off and threw them in the car" and that they had them on "ten minutes ago" and they were going to put them back on. (1T11-23 to 12-5; Sa29 Body Worn Camera of Officer O'Grady, admitted into evidence at the hearing as S-2, at timestamp 7:03). When asked why he took both plates off he said he thought it was bolted the wrong way, but agreed that it sounded "weird" that he would take both off. (Sa28; S-1 at timestamp 13:30 to 13:41; Sa29; S-2 at timestamp 15:00 to 15:20). Mr. Howard then consented to a search of his car and his person. (S-2 at timestamp 11:40 to 12:10).

When giving permission to search the car, Mr. Howard advised police that the bag in the front seat under defendant's leg was not his and belonged to defendant. (1T30-12 to 14; Sa29; S-2 at timestamp 15:10). Defendant acknowledged that the bag was his and when asked, gave consent to search the bag. Shortly thereafter, he withdrew consent. (1T37-7 to 14; Sa29; S-2 at timestamp 14:10 to 15:10). Officer O'Grady advised defendant that they were going to call for a canine to "sniff the bag" and if it "hit," they would search the bag. (1T37-13 to 20; Sa29; S-2 at timestamp 21:46 to 22:22). Defendant consented to a search of his person with negative results. (Sa29; S-2 at timestamp 22:54). A search of the car revealed no contraband. (Sa29; S-2 at timestamp 22:28).

Before the dog arrived at the scene, Officer O'Grady was advised by dispatch that defendant had an outstanding arrest warrant from Woodbridge. (1T32-20 to 33-1; Sa29; S-2 at timestamp 24:00). Defendant was placed in handcuffs at the rear of the car and Officer O'Grady retrieved defendant's bag from the front passenger compartment. (Sa29; S-2 at timestamp 24:17). Officer O'Grady conducted a search of the bag in defendant's presence, at the rear of the vehicle where defendant was being detained. (1T33-10 to 17). A search of the bag revealed a 9 mm handgun loaded with thirteen rounds and one in the chamber, with additional ammunition in the bag. (1T33-18 to 25; Sa29; S-2 at timestamp 24:15 to 25:20). Both defendant and Mr. Howard were transported to Union Police Headquarters and the car was impounded.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS MUST BE REVERSED AS IT WAS AN ABUSE OF DISCRETION AND CONTRARY TO APPLICABLE LAW. (Sa15 to 26; Sa27).

The record in this case clearly establishes that the car in which defendant was a passenger was lawfully stopped and that officers had a reasonable and articulable suspicion to detain defendant and ask for his identification. Further, in accordance with relevant case law, the record establishes that defendant was lawfully placed under arrest pursuant to an outstanding warrant and his bag was properly searched pursuant to a search incident to arrest. Accordingly, the motion court erred in granting defendant's Motion to Suppress and, thus, the court's order must be reversed on appeal.

Here, the trial court's finding that there was insufficient evidence in the record to support the officer's request that defendant present his identification failed to consider the totality of the circumstances and that this was not only a motor vehicle stop, but also an investigation into a report of an attempted car theft. Additionally, the trial court erred in finding that the search of defendant's bag incident to arrest and the recovery of the illegal handgun was

unlawful because the bag was not in defendant's possession at the time of his arrest and the search was not contemporaneous with his arrest. The trial court's findings and conclusions of law are unsupported by the record and are contrary to longstanding case law. Therefore, the order of the trial court granting defendant's motion to suppress must be reversed.

A. The Trial Court Erroneously Found That There Was Insufficient Evidence In The Record To Support The Officer Requesting Defendant's Identification. (Sa20 to 23).

In its decision, the trial court found that there was insufficient evidence in the record to support Officer O'Grady's request for defendant, a passenger in the motor vehicle, to present his identification. The court reasoned that Officer O'Grady asked defendant for his identification as soon as he arrived on the scene because he was not wearing a seatbelt, but that the officer arrived at the scene approximately two minutes after the initial stop by Sergeant DePinho and could not have known whether there was, in fact, a seatbelt violation warranting a summons. The court noted that Officer O'Grady asked for identification before he became aware of the conflicting stories given by Mr. Howard regarding the license plates, ownership of the car and their conflicting stories regarding where they were coming from and where they were going. As a result, the court found that it was unclear if Officer O'Grady had a basis to ask for identification for a simple motor vehicle stop. However, the court's

reasoning is flawed and fails to consider the totality of the circumstances as outlined in Officer O'Grady's testimony and the body worn camera footage that was admitted into evidence and considered by the court. Accordingly, the court erred in finding that there was inadequate support in the record justifying the officer's request for identification from defendant.

In reviewing a motion to suppress, an appellate court will defer to the factual and credibility findings of the trial court, "so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). "An appellate court should disregard those findings only when a trial court's findings of fact are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). The legal conclusions of a trial court "are reviewed de novo." Id. at 263.

Police may conduct a warrantless, investigatory stop of a vehicle and its occupants if they have an objectively reasonable, particularized, and articulable suspicion of criminal activity. See, e.g., State v. Davis, 104 N.J. 490, 505 (1986). "Common sense and good judgment ... require that police officers be allowed to engage in some investigative street encounters without probable cause." Ibid. Yet, the stop must be based on more than a "police officer's subjective hunch." Ibid. Courts will consider the "totality of the

circumstances," Ibid., including inferences that a trained law enforcement officer makes, which may elude others. Id. at 501. "Facts that might seem innocent when viewed in isolation can sustain a finding of reasonable suspicion when considered in the aggregate ... ." State v. Nishina, 175 N.J. 502, 511 (2003). The court "balanc[es] the State's interest in effective law enforcement against the individual's right to be free from unwarranted and/or overbearing police intrusions." Davis, 104 N.J. at 504. Courts evaluate the "totality of the circumstances surrounding the police-citizen encounter" when determining the reasonableness of the stop. State v. Privott, 203 N.J. 16, 25-26 (2010) (quoting Davis, 104 N.J. at 504).

During a lawful traffic stop, a police officer is permitted to "'inquire' into matters unrelated to the justification for the traffic stop," State v. Dunbar, 229 N.J. 521, 533 (2017) (quoting Arizona v. Johnson, 555 U.S. 323, 333 (2009)), and "may make 'ordinary inquiries incident to [the traffic] stop,'" Dunbar, 229 N.J. at 533. "If, during the course of the stop or as a result of the reasonable inquiries initiated by the officer, the circumstances 'give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" State v. Dickey, 152 N.J. 468, 479-80 (1998) (quoting United States v. Johnson, 58 F.3d 356, 357-58 (8th Cir. 1995)).

An investigative stop or detention does not offend the Federal or State Constitution, and no warrant is needed, "if it is based on 'specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity." State v. Rodriguez, 172 N.J. 117, 126 (2002) (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

Although reasonable suspicion is a less demanding standard than probable cause, "[n]either 'inarticulate hunches' nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights." State v. Stovall, 170 N.J. 346, 372 (2002) (Coleman, J., concurring in part and dissenting in part) (quoting State v. Arthur, 149 N.J. 1, 7-8 (1997)); accord State v. Alessi, 240 N.J. 501, 518 (2020). Determining whether reasonable and articulable suspicion exists for an investigatory stop is a highly fact-intensive inquiry that demands evaluation of '"the totality of 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. Privott, 203 N.J. at 25-26, (quoting State v. Davis, 104 N.J. at 504). "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." Elders, 192 N.J. at 247. The inquiry is based on the totality of the circumstances and takes into consideration numerous factors, including officer experience and knowledge. State v. Pineiro, 181 N.J. 13, 22 (2004).

In this case, it is clear that Officer O'Grady had a reasonable and articulable suspicion to conduct an investigatory detention of defendant and ask him for his identification. Notably, this was not simply a motor vehicle stop executed because the vehicle did not have displayed license plates. Rather, in his testimony, as supported by his body worn camera footage, Officer O'Grady testified that there was a radio call to officers in the Vauxhall area regarding an attempted car burglary. Very shortly thereafter, Officer O'Grady heard Sergeant DePinho's call regarding his motor vehicle stop of a car in that area, with no license plates. Officer O'Grady responded to the Wawa convenience store and immediately observed the Hyundai Sonata with no license plates and no door handles on any of the car doors. As he approached the car, he also noted that the passenger was not wearing a seatbelt. At that time, he asked him for identification. Significantly, Officer O'Grady stated: "[P]rior to it there was a call for a motor vehicle burglary, like I said, attempted. His vehicle was driving around with no plates, no handle bars – door handles, excuse me." (1T10-25 to 11-5). Later in his testimony,

Officer O'Grady explained that there are several reasons why someone might take their license plates off their car, including "trying to evade police, they're trying to evade cameras ... so that their car is undetected" by license plate recognition cameras. (1T28-1 to 18). As a result, in light of the report of a motor vehicle burglary at that time and in that area, Officer O'Grady believed that this vehicle may have been involved in that offense.

Clearly, based upon the testimony of Officer O'Grady, which the court found to be credible and consistent with his BWC, (Sa18) he had a reasonable articulable suspicion to believe, separate and apart from the possible seat belt violation, that defendant and the driver of the car may have been involved in a crime, namely car burglary or theft. Because Officer O'Grady justifiably believed that defendant may have been involved in a crime, there was a basis for him to conduct an investigatory detention of defendant and request his identification.

Nonetheless, despite all of the suspicious factors surrounding the stop, the trial court erroneously found that there was insufficient evidence in the record to support that conclusion. The court observed that the officer's testimony did not support the contention that he was aware that the occupants gave conflicting stories or inconsistent reasons the car was not displaying any license plates at the time he requested identification and therefore, there was

no basis to ask defendant for identification. As a result, the trial court viewed the circumstances of this case as if this were a simple motor vehicle stop and defendant was merely a passenger who was not wearing a seatbelt. However, the court's findings and analysis are clearly contradicted by the record and should be rejected by this Court.

Specifically, in its decision, the trial court relies upon Hornberger v. Am Broad. Cos., Inc., 351 N.J. Super. 577, 613 (App. Div. 2002), and State v. Boston, 469 N.J. Super. 223, 263 (2020) which prohibit officers from asking passengers for identification during a routine motor vehicle stop. (Sa21). The court noted that the Appellate Division in Boston held that "a particularized suspicion" is required to request identification from a passenger during a traffic stop. (Sa21). While the statement of the law is correct, the trial court failed to consider the totality of the circumstances in this case.

Notably, the court failed to recognize that the Hyundai Sonata was not stopped exclusively for failing to display its license plates. Rather, the car was being detained because of the motor vehicle violation as well as suspicion that the car may be stolen and that it may have been involved in an attempted car burglary. Indeed, Officer O'Grady testified that prior to responding to the scene he was aware of the call for the attempted motor vehicle burglary in the area. His observation that the Hyundai had no license plates or door handles,

reasonably raised his suspicion as to ownership of the car and possibility that the car was stolen. Officer O'Grady explained in his testimony that individuals might remove their license plates to avoid detection by police and license plate recognition cameras. Though he may have said that he also observed that defendant was not wearing a seatbelt, in light of the entirety of the stop until that point, that clearly was not the basis for him asking defendant for identification. Without question, the totality of the circumstances strongly support that Officer O'Grady, as well as others who arrived at the scene, were investigating whether this car was stolen, whether it was involved in the report of an attempted car burglary and why the front and back license plates were removed.

As the New Jersey Supreme court stated in State v. Stovall, "[th]e principal components of a determination of reasonable suspicion ... [are] the events which occurred leading up to the stop ... , and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion ... ." 170 N.J. 346, 357 (2002)(emphasis added)(alteration in original) (quoting Ornelas v. United States, 517 U.S. 690, 696, (1996)). Undoubtedly, the facts of this case viewed from the perspective of an objectively reasonable police officer, i.e., Officer O'Grady, provided a reasonable articulable suspicion to believe the occupants

of the car were involved in a crime to justify an investigative detention of the occupants of the vehicle and the request for identification. Accordingly, the findings and conclusions of the trial court to the contrary should be rejected by this Court.

B. The Trial Court Erred In Granting The Motion To Suppress As The Search Of Defendant's Bag Was A Lawful Search Incident To Arrest. (Sa23 to 26).

Though the trial court questioned the legality of asking defendant for identification and the subsequent discovery that defendant had an outstanding warrant, it nonetheless addressed the question of whether the search of defendant's back pack was a valid search incident to arrest. The court found that despite the fact defendant was in possession of his backpack at the time police arrived at the scene and he claimed ownership of it (while Mr. Howard denounced ownership of the bag), because defendant had been separated from the bag for approximately twenty minutes, the bag was no longer in his immediate control or possession and the search was not valid. The trial court's analysis, however, is contrary to case law permitting such a search and should be reversed on appeal.

The Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution guarantees individuals the right to remain free from unreasonable governmental searches and seizures. When no

warrant is sought, the burden is on the State to demonstrate by a preponderance of the evidence that the search or seizure "falls within one of the few well-delineated exceptions to the warrant requirement." State v. Pineiro, 181 N.J. at 19.

One such exception to the warrant requirement is the Search Incident to a Lawful Arrest. The United States Supreme Court in Chimel v. California, 395 U.S. 752 (1969), held that when the police arrest a suspect, they may conduct a search of his "person and the area 'within his immediate control'--construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." Id. at 763. The Chimel test for determining the validity of a search incident to an arrest has repeatedly been upheld by the Court. See, e.g., Illinois v. Lafayette, 462 U.S. 640 (1983)(search conducted as a part of a routine administrative procedure that was incident to defendant's arrest and incarceration, the search was not unreasonable); United States v. Robinson, 414 U.S. 218 (1973)(once probable cause to arrest defendant was established, a full search incident to that arrest was authorized in order to protect the officer's safety and to preserve evidence); c.f., United States v. Chadwick, 433 U.S. 1, 14 (1977)(search conducted more than an hour after federal agents had gained exclusive control

of the footlocker and long after respondents were securely in custody was not incident to arrest or justified by any exigency).

However, the validity of such a search "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." Robinson, 414 U.S. at 235. "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." Id. at 235; see also Michigan v. DeFillippo, 443 U.S. 31, 35-36 (1979) (where ordinance violation was later found to be unconstitutional, if the arrest was valid when made, the search incident to arrest was valid).

The authority to search an arrestee and the area within his immediate control includes the authority to search a container found in the arrestee's possession. Gustafson v. Florida, 414 U.S. 260, 266 (1973) (the authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect); Robinson, 414 U.S. at 236.

"The only limitation upon a search of an arrestee's person and the area within his immediate control is that the search may not be 'remote in time or place from the arrest[.]'" State v. Oyenusi, 387 N.J. Super. 146, 154 (App. Div. 2006) (quoting United States v. Chadwick, 433 U.S. at 15), certif. denied, 189 N.J. 426 (2007). "The requirement of substantial contemporaneity of the arrest and search is ordinarily satisfied if the search ... is made at the location of the arrest while the arrestee is still on the scene." Id. at 155.

In Oyenusi, supra, this Court found that a search incident to an arrest was valid where the police had searched two unsealed bags in the possession of the defendant at the time of the arrest, but after the defendant had been handcuffed and no longer had access to the bags. This Court noted that the requirement of "substantial contemporaneity," i.e., not too remote in time or place to the arrest, is normally met when the search is performed at the location of the arrest while the suspect is still present. Id. at 155 (emphasis added). Additionally, handcuffing does not terminate the officers' right to search an arrestee's person incident to arrest. State v. Williams, 192 N.J. 1, 5, 13 (2007); State v. Sessions, 172 N.J. Super. 558, 569 (App. Div. 1980) (upholding search of handcuffed arrestee's sock). Similarly, if bags were in an arrestee's possession prior to arrest, officers may take and search the bags even

after the arrestee was handcuffed and "no longer had access to the bags." Oyenusi, 387 N.J. Super. at 157.

Relying upon United States v. Nelson, 102 F.3d 1344 (4th Cir. 1996) the Appellate Division in Oyenusi noted, the fact that police seize a container in the possession of an arrestee at the time of the arrest, thereby depriving the arrestee of access, does not mean that a warrant must be obtained before the container can be opened and examined. Quoting Nelson, the Appellate Division stated:

> While the need for the incident-to-arrest exception is indeed grounded on the need to protect law enforcement officers and evidence, the validity of such a search does not end at the instant the risks justifying the search come to an end. Even though the warrant exception is well grounded on the existence of exigent risks attending arrest, the pragmatic necessity of not invalidating such a search the instant the risks pass is well accepted ... . Just as arresting officers need not determine that the defendant actually have a gun or actually intend to destroy evidence before conducting a search incident to arrest, they need not reorder the sequence of their conduct during arrest simply to satisfy an artificial rule that would link the validity of the search to the duration of the risks. Pragmatic necessity requires that we uphold the validity and reasonableness of a search incident to arrest if the search is part of the specific law enforcement operation during which the search occurs.
>
> [Oyenusi, 387 N.J. Super. at 155-156, (quoting Nelson, 102 F.3d at 1347)].

Yet, despite this clear language, the trial court found that because defendant had been separated from his bag for approximately twenty minutes prior to his arrest, the bag was no longer in his possession and the search was therefore invalid. (Sa25). The court's reasoning and application of the law, however, is flawed and contrary to the precise language of Oyenusi.

Specifically, in its opinion, for the purpose of determining whether the search was contemporaneous with the arrest, the trial court erroneously considered the amount of time that elapsed from the beginning of the motor vehicle stop to the search of the bag. This calculation however is incorrect as Oyenusi clearly looks to the time elapsing from a defendant's arrest to the search incident to arrest, not the time from which the police encounter begins. Importantly, in Oyenusi, the court held that a search incident to arrest must not be "remote in time or place from the arrest[.]" Id. at 146 (emphasis added). Further, the fact that defendant did not have access to his bag once he was arrested also did not invalidate the search. Id. at 155-156. Accordingly, the trial court's analysis and conclusions of law are mistaken.

Rather, like Oyenusi, here, the search of defendant's bag was made at the location of the arrest while defendant was still present and only a foot away from the bag. Specifically, the officers learned defendant had an open warrant for his arrest which preexisted the search of his bag. Importantly, the

bag had been located on the front passenger floor directly under defendant's feet when officers first made contact with the occupants of the vehicle. While officers were effectuating the arrest of defendant at the rear of the Hyundai Sonata, Officer O'Grady retrieved defendant's bag from the front passenger floor, an area he had been given permission to search by the driver of the car. Indeed, both defendant and Mr. Howard had advised the officers that the bag belonged to defendant. Defendant specifically claimed ownership of the item and initially gave consent to search the bag indicating his authority over the bag. While still on scene and at the rear of the car, Officer O'Grady put the bag on the trunk of the Sonata directly in front of defendant and shined his flashlight inside. Officer O'Grady was able to observe a handgun inside the bag. Under the circumstances set forth above, the warrantless search of defendant's bag, which was in his possession, occurred contemporaneously with, and in the same location as defendant's arrest. Thus, the search falls within the scope of the Search Incident to a Lawful Arrest exception to the warrant requirement. Accordingly, the trial court's order granting defendant's Motion to Suppress should be reversed.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the trial court's order granting defendant's Motion to Suppress be reversed.

Respectfully submitted,

WILLIAM A. DANIEL
Prosecutor of Union County

s/Michele C. Buckley

By: MICHELE C. BUCKLEY
Assistant Prosecutor
Attorney ID No. 049301992

MCB/mg

PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Deputy Public Defender
31 Clinton Street, 9th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973-877-1200 · Fax 973-877-1239

JENNIFER N. SELLITTI
Public Defender

September 30, 2025

SCOTT M. WELFEL
ID. No. 084402013
Assistant Deputy Public Defender
Scott.Welfel@opd.nj.gov

Of Counsel and
On the Letter-Brief

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3573-24 (AM-000547-24)

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Appeal From An Interlocutory Order Of the Superior Court of New Jersey
v.	:	Criminal Division, Union County
JAVANTE J. DORISME,	:	
		Indictment No. 24-12-01259-I
Defendant-Respondent.	:	
		Sat Below:
	:	
_____		Hon. Anthony J. Parenti, Jr., J.S.C.

Your Honors:

This letter-brief and appendix are submitted on behalf of Defendant in lieu of a formal brief pursuant to R. 2:6-2(b).

TABLE OF CONTENTS

PROCEDURAL HISTORY

Defendant relies on the State's Procedural History. (Sb1)[1]

STATEMENT OF FACTS

On July 1, 2024, Sergeant Michael DePinho and Officer Ryan O'Grady were patrolling the area of Vauxhall Road in Union Township after a report of an attempted motor vehicle burglary. (Sa15) At approximately 10:30 p.m., Sgt. DePinho observed a black Hyundai Sonata "in the area of Vauxhall Road" which had no front or rear license plates affixed. (Sa15) Sgt. DePinho activated his lights and sirens; after a short time, the Hyundai pulled into a Wawa parking lot and stopped. (Sa15)

Sgt. DePinho advised the driver, determined to be Gene Howard, that he was being stopped for not having license plates. (Sa16) Howard grabbed the plates from the passenger seat floor, handed them to the officer, and complied with the officer's request that he step out of the vehicle. (Sa16) Howard indicated he had taken the plates off because there was a screw or something dangling from one of them, and indicated he was going to put them back on.

---

[1] The following abbreviations are used:
1T – Motion Hearing (May 23, 2025)
Sb – State's Brief (filed Sept. 16, 2025)
Sa – State's Appendix (filed Sept. 16, 2025)

(1T 27-16 to 20)

At approximately 10:35 p.m., O'Grady arrived on scene and approached defendant Javante Dorisme, the front-seat passenger. (Sa16) He observed that the Hyundai had no door handles and that Dorisme was not wearing a seatbelt. (1T 9-16 to 19) He asked Dorisme for identification; Dorisme showed O'Grady a photo of his ID on his phone. (Sa16) O'Grady stated that he requested Dorisme's identification because he observed that Dorisme was not wearing a seatbelt. (Sa21) But by the time O'Grady arrived on scene, the Hyundai had been parked for two minutes. (Sa22). Sgt. DePinho did not make any reference to a seatbelt violation, either to the occupants of the vehicle, or over the radio. (Sa22) Because O'Grady did not observe the Hyundai being driven and was not present when it first parked at the Wawa, he could not have known whether or not Dorisme was wearing a seatbelt when the vehicle was being operated. (Sa22) O'Grady never mentioned the alleged seatbelt violation to Dorisme and did not issue a seatbelt summons to Dorisme. (Sa22)

O'Grady then asked Dorisme where he and Howard were heading, and Dorisme said they were getting gas before going to his house in Newark. (Sa16) At 10:37 p.m., O'Grady asked Dorisme to step out of the car and asked him to move to the trunk of the car; Dorisme complied. (Sa16) O'Grady asked Howard where they were going, and Howard stated he had come from his

house in Hillside, picked up his friend, was getting gas, and then was going back to his house in Hillside. (Sa16)

O'Grady told Howard that his story "wasn't adding up" with Dorisme's and asked for consent to search the car. (Sa17) Howard gave consent to search the car and indicated everything in the car was his except for the backpack that was on the passenger-side floormat, which he said belonged to Dorisme. (Sa17) Dorisme initially gave consent to search his bag but then withdrew the consent. (Sa17; 1T 23-7 to 24-8) The bag remained inside the car on the passenger floorboard during the entire time that Dorisme and Howard were outside the car detained by police. (Sa15) The officers searched the car—with the exception of Dorisme's bag—finishing at 10:55 p.m., but found no contraband. (Sa17) Dorisme consented to a search of his person and the police likewise found no weapons or contraband. (Sa17)

After the search, approximately twenty minutes after Dorisme had been ordered out of the vehicle, the officers learned that Dorisme had an active ATS warrant—a traffic warrant—out of Woodbridge. (Sa17, 25; 1T 32-25 to 33-1) Upon learning of the warrant, the officers placed Dorisme under arrest in handcuffs. (Sa17; 1T 33-2 to 4) There were between four and five officers at the scene at this time. (Sa25) At this moment, Dorisme was positioned at the trunk of the vehicle "where he was not only arrested and handcuffed but

physically restrained in the grip of another officer." (Sa25) He was separated from his bag by the distance between his location by the trunk to the passenger floorboard, as well as the closed passenger door. (Sa25) Dorisme had been completely compliant both leading up to and after his arrest, including when he had been searched without incident or results. (Sa25)

While Dorisme was being handcuffed by another officer at the trunk of the car, O'Grady opened the front-passenger-side door and retrieved Dorisme's backpack from the floor. (Sa17) He brought the bag to the trunk, rested it on the trunk, and searched it with a flashlight. (Sa18) He found a black 9mm Smith and Wesson M&P handgun loaded with thirteen rounds of ammunition, as well as a box of 9mm ammunition. (Sa18)

The trial court found that "the bag in the instant case was not within the defendant's immediate control because he was removed from the vehicle and separated from his bag for twenty minutes before the police determined that the defendant would be arrest[ed]." (Sa25) The court further found that:

> There was no testimony, nor evidence suggesting that the defendant was resisting the police or presented a danger to police safety or evidence. Nor . . . did the officers actually fear for their safety or that of any evidence at any point during the stop. . . . A police officer who reasonable feared for his own safety or sought to protect evidence would not, in the Court 's view, bring a bag containing unknown items directly within the reaching distance of the person they just arrested.

[(Sa26)]

Thus, the Court found that "the essential underpinning[s] of the search incident to arrest exception to the warrant requirement are absent in this case," and entered an order granting Dorisme's motion to suppress. (Sa26)

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD AFFIRM THE ORDER SUPPRESSING THE EVIDENCE BECAUSE THE MOTION COURT CORRECTLY FOUND THAT THE BACKPACK WAS NOT IN DEFENDANT'S POSSESSION OR WITHIN THE AREA OF HIS IMMEDIATE CONTROL AT THE TIME OF HIS ARREST, AND THUS THE SEARCH INCIDENT TO ARREST DOCTRINE DID NOT JUSTIFY A WARRANTLESS SEIZURE AND SEARCH OF THE BACKPACK.

The federal and state constitutions both guarantee "the right of the people to be secure . . . against unreasonable searches or seizures." U.S. Const., amends. IV; N.J. Const. art. I, ¶ 7; Mapp. v. Ohio, 367 U.S. 643, 656-57 (1961) (applying the Fourth Amendment to the states via the Fourteenth Amendment). Pursuant to these protections, police generally must get a warrant before stopping and searching a person or their property. State v. Witt, 223 N.J. 409, 422 (2015). Warrantless stops and searches are presumptively

invalid. State v. Edmonds, 211 N.J. 117, 129 (2012). The State bears the burden of establishing by a preponderance of the evidence that any warrantless stop or search is justified by one of the "well-delineated exceptions to the warrant requirement." Id. at 128-30.

As set forth in Part A, this case involves a straightforward application of the Supreme Court's articulation of the search incident to arrest doctrine in State v. Eckel, 185 N.J. 523 (2006). In Eckel, the Court emphasized that the search incident to arrest exception to the warrant requirement must be limited to areas within the defendant's immediate control in order to insure it remains tethered to its justifications of officer safety and preservation of evidence; thus, "where a defendant has been arrested but has not been removed and secured, the court will be required to determine, on a case-by-case basis whether he or she was in a position to compromise police safety or to carry out the destruction of evidence." Id. at 541. Both below and on appeal, the State misguidedly relies on State v. Oyenusi, 387 N.J. Super. 146 (App. Div. 2006), to argue that the search incident to arrest doctrine justified the search in this case. (Sb18-20; Sa20) But Oyenusi itself reiterates the same "area within immediate control" limitation as in Eckel, simply making clear that the area within defendant's immediate control is assessed at the moment of his arrest rather than at the moment of the search.

Here, the trial court correctly found that "the bag in the instant case was not within the defendant's immediate control because he was removed from the vehicle and separated from his bag for twenty minutes before the police determined that the defendant would be arrest[ed]." (Sa25) "Appellate courts reviewing a grant or denial of a motion to suppress must defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record." State v. Hubbard, 222 N.J. 249, 262 (2015). The State does not challenge the court's factual findings on appeal but rather argues that the trial court erred in its legal conclusions. (Sb15, 20) Because the trial court correctly applied the law, contrary to the State's contentions, the trial court's rejection of the search incident to arrest doctrine and its order suppressing the evidence should be affirmed.

Additionally, as set forth in Part B, although the court below did not definitively conclude that the police were also unjustified in demanding Dorisme's identification, this provides a separate sufficient basis on which this Court could affirm the suppression order.

A. The Trial Court Correctly Determined That The Search Did Not Meet The Search Incident To Arrest Exception.

In this case, the State relies on the search incident to arrest exception to the warrant requirement. This exception was first articulated by the United States Supreme Court in Chimel v. California, 395 U.S. 752, 762-63 (1969),

which reasoned:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control"—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
>
> There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant. The "adherence to judicial processes" mandated by the Fourth Amendment requires no less.
>
> [(emphasis added)]

Following Chimel, the Supreme Court applied the search incident to arrest exception to an automobile search in New York v. Belton, 453 U.S. 454 (1981). In Belton, during a motor vehicle stop for a speeding violation, the officer developed probable cause to arrest the driver and passengers for

possession of marijuana. Id. at 455-56. The officer then searched the passenger compartment of the vehicle, found a black leather jacket belonging to defendant Belton, and searched the zipped pocket, finding cocaine. Id. at 456. The Court held that the search was justified pursuant to the search incident to arrest exception to the warrant requirement, setting forth the following bright-line rule: "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460.

The New Jersey Supreme Court rejected the Belton rule on State constitutional grounds in Eckel, 185 N.J. at 540-41. Our Court criticized Belton for "establishing a bright-line rule that essentially validates every automobile search upon the occupant's arrest, regardless of whether the occupant has the capacity to injure the police or destroy evidence." Id. at 540. Our Court observed that the Belton rule "detached itself from the theoretical underpinnings that initially animated the search incident to arrest exception" and rejected Belton because adopting it would have required "accept[ing] a theoretically rootless doctrine that would erode the rights guaranteed to our own citizens by Article I, Paragraph 7 of our constitution." Ibid. In lieu of Belton's bright-line rule, our Court held that "where a defendant has been arrested but has not been removed and secured, the court will be required to

determine, on a case-by-case basis whether he or she was in a position to compromise police safety or to carry out the destruction of evidence." Id. at 541.

Eckel and other cases have made clear that, under New Jersey law, the search incident to arrest exception to the warrant requirement "is not limitless in terms of purpose or scope." State v. Dangerfield, 171 N.J. 446, 461 (2002). This exception is limited by its "two specific purposes—the protection of the police and the preservation of evidence." Eckel, 185 N.J. at 524. And it is limited in scope both in terms of (1) location and (2) timing. Regarding location, "'[t]he scope of that search is restricted to the person of the arrestee and the area within his or her immediate control, meaning 'the area from within which he might gain possession of a weapon or destructible evidence.'" Dangerfield, 171 N.J. at 461 (quoting Chimel 395 U.S. at 763). Regarding timing, "the search [must] be 'substantially contemporaneous' with the arrest." Oyenusi, 387 N.J. Super. at 154. What is disputed in this case is not the contemporaneity of the search to the arrest, but rather whether the backpack was within the area of Dorisme's immediate control at the time of his arrest.

The Eckel line of cases helps define the scope of the first component of search incident to arrest—the area within the defendant's immediate control. In Eckel, the police conducted a motor vehicle stop of the defendant's

girlfriend's car, which she was driving and in which he was a passenger. 185 N.J. at 524. One officer asked Eckel to exit the vehicle and informed him he was under arrest for an outstanding warrant; Eckel was placed in the back of a patrol car. Id. at 525. His girlfriend asked for permission to bring Eckel some clothes he had left in her car. Ibid. The officer said she could not retrieve the clothes but that he would instead. Ibid. As he picked up clothing from the floor by the passenger seat, he observed "green vegetation and stems" that he believed to be marijuana, retrieved "a pair of blue denim shorts from behind the passenger seat" and opened "a softball-sized baggie rolled up in the shorts," finding it had cocaine residue and a scale. Id. at 525-26.

The trial court in Eckel denied the defendant's motion to suppress. Id. at 527. On appeal, the State's only asserted basis for the warrantless search was the search-incident-to-arrest exception as interpreted by Belton. Ibid. The Appellate Division rejected the State's argument and reversed, concluding "that because defendant was already in custody in the rear of the patrol car before the vehicle search took place, the interior of the vehicle was not under his control and the evidence seized should have been suppressed." Ibid. The Supreme Court affirmed "the Appellate Division's entirely correct disposition of the Belton issue," although it remanded for consideration of other potential exceptions to the warrant requirement. Id. at 542.

Decided the same day as Eckel was another case in which the Supreme Court rejected the application of the search-incident-to-arrest exception, State v. Dunlap, 185 N.J. 543, 549 (2006). In that case, police had probable cause to arrest the defendant in advance of his arrival by car at a particular house. Id. at 545. Dunlap arrived, "got out of the car and began walking toward the house"; "[h]e was arrested and secured" while "between eight and ten officers [were] present at the scene." Ibid. The police took the defendant's keys from his pocket, unlocked his car, and searched it. Ibid. Because Dunlap "was removed and secured" from the vehicle, he had "no capacity to reach the interior of the vehicle to destroy evidence or to endanger the police," and accordingly the Court held that the police could not conduct a warrantless search of the vehicle incident to arrest. Id. at 549.

This Court rejected the search-incident-to-arrest exception in State v. Roman-Rosado, 462 N.J. Super. 183, 191-92, 203 (App. Div. 2020), aff'd as modified sub nom. State v. Carter, 247 N.J. 488 (2021), where the police officer ordered the defendant to exit the vehicle to arrest him for open warrants, saw "a white garment that looked like it had something bulky wrapped in it, shoved partially under the [defendant's] seat," and thus reached into the car to remove the item, discovering it to be a handgun. This Court held that the search was not justified as incident to arrest in that case "[b]ecause

[the defendant] was removed from the car and had no control over the area at the time the officer reached under the driver's seat." Id. at 203.

Perhaps most analogous to this case, this Court in State v. Carroll, 386 N.J. Super. 143 (App. Div. 2006), applied the same principles to the search of a bag within a vehicle. In that case, the police "arrested defendant and secured him at a distance from the vehicle before searching the inside of" his car. Id. at 156. "[D]efendant had been handcuffed, patted down for weapons, removed from the Buick, placed in the custody of at least one other police officer, and was standing near a police car about 'one car length' from the Buick when" another officer "went inside the Buick and retrieved the plastic bag" that they suspected contained contraband. Ibid. This Court held that because "defendant was secured one car length away from the Buick after he was placed under arrest, . . . the car was not then within his immediate control" and thus rejected the search-incident-to-arrest justification. Ibid. The Court also "reject[ed] the motion judge's surmise that defendant, while in handcuffs, might somehow have overcome the police and re-entered the vehicle, a proposition that is not reasonably supported by the record given the simultaneous arrival of several other police cars at the scene." Ibid.

Just like in Carroll, at the moment of Dorisme's arrest, he was separated from his bag by the distance between his location at the trunk of the car to the

passenger floorboard, where the bag was located, as well as by the closed passenger door. (Sa25) The trial court found that "the bag in the instant case was not within the defendant's immediate control because he was removed from the vehicle and separated from his bag for twenty minutes before the police determined that the defendant would be arrest[ed]." (Sa25) This conclusion is supported by Carroll.

Both below and on appeal, the State primarily relies on Oyenusi. (Sb18-20; Sa20) But a close reading of Oyenusi lends further support for the limited scope of the area of immediate control set forth above. The facts of Oyenusi involved a motion to suppress items seized as a result of a search incident to arrest of the defendant's brother outside his home. Id. at 151. "At the time of [the defendant's brother's] arrest, he was carrying two white plastic bags. The arresting officers took the bags from [the defendant's brother], placed handcuffs on him, and then looked inside the bags, which were not sealed or otherwise secured." Ibid. This Court concluded that both the "immediate control" and "substantially contemporaneous" requirements were met, although only the latter was truly at issue: (1) "[s]ince [the defendant's brother] was carrying the bags when he was arrested, they were clearly 'within his immediate control;'" and (2) although the defendant's brother no longer had access to the bags at the time of the search, "the search was substantially

contemporaneous with his arrest and therefore constituted a valid search incident to the arrest under the Fourth Amendment." Id. at 157.

The key point in Oyenusi is that courts assess the area of immediate control at the moment of arrest rather than at the moment of the search. This Court noted that at the moment of the search, the defendant's brother was handcuffed and no longer had access to the bags. Ibid. However, he did have control over the bags at the moment of the arrest, as he was still carrying them at that point. Ibid. This Court favorably quoted United States v. Nelson, 102 F.3d 1344 (4th Cir.1996) for the proposition that police "need not reorder the sequence of their conduct during arrest simply to satisfy an artificial rule that would link the validity of the search to the duration of the risks." Id. at 156 (quoting Nelson, 102 F.3d at 1347).

A close read of Oyenusi makes clear that this Court closely adhered to the requirement that the scope of a search incident to arrest must be limited to the area within a defendant's immediate control at the time of arrest. The Court noted that "[t]he authority to search an arrestee and the area within his immediate control includes the authority to search a container found in the arrestee's possession." Id. at 154 (emphasis added). The Court repeated the "in his or her possession" language throughout the opinion. Id. at 155 ("The requirement of substantial contemporaneity of the arrest and search is

ordinarily satisfied if the search of the arrestee and a container in his or her possession is made at the location of the arrest while the arrestee is still on the scene.") (emphasis added); ibid. ("[T]he fact that the police seize a container in the possession of an arrestee at the time of the arrest, thereby depriving the arrestee of access, does not mean that a warrant must be obtained before the container can be opened and examined.") (emphasis added).

This limitation is further supported by the Supreme Court cases that Oyenusi cites for the proposition that a container found in the arrestee's possession at the time of arrest may be searched incident to arrest. Both Gustafson v. Florida, 414 U.S. 260, 266 (1973) and United States v. Robinson, 414 U.S. 218, 236 (1973) involved searches of cigarette boxes that were found in the arrestees' pockets when searched incident to arrest.

Taken together, Oyenusi, Eckel, Dunlap, Carroll, and Roman-Rosado all support the judge's conclusion in this case that the backpack on the front-passenger-seat floorboard was not in the area of Dorisme's immediate control at the time of his arrest. At the time of the seizure and search of the backpack, Dorisme was located at the trunk of the vehicle "where he was not only arrested and handcuffed but physically restrained in the grip of another officer." (Sa25) He was separated from his bag by the distance from the trunk to the passenger floorboard, as well as the closed passenger door. (Sa25)

Dorisme had been completely compliant with police officer commands both leading up to and after his arrest, including when he had been searched without incident or results. (Sa25) There were between four and five officers at the scene at this time. (Sa25)

The trial court thus correctly found that "the bag in the instant case was not within the defendant's immediate control because he was removed from the vehicle and separated from his bag for twenty minutes before the police determined that the defendant would be arrest[ed]." (Sa25) "There was no testimony, nor evidence suggesting that the defendant was resisting the police or presented a danger to police safety or evidence." (Sa25) Indeed, the court noted that the officers acted contrary to any concern for officer safety by "bring[ing] a bag containing unknown items directly within the reaching distance of the person they just arrested." (Sa26) Thus, the trial court correctly concluded that "the essential underpinnings of the search incident to arrest exception to the warrant requirement are absent in this case" and accordingly "that the search was not valid under the search incident to arrest exception." (Sa26) Accordingly, the trial court's well-reasoned opinion suppressing the evidence should be affirmed.

B. The State Did Not Meet Its Burden To Justify The Officer's Demand For Dorisme's Identification.

Defendant primarily relies on his motion opposition brief. As noted, it is unlawful for officers to request a passenger's identification during the course of a motor vehicle stop without a "basis for police to focus on the passenger." State v. Boston, 469 N.J. 223, 263 (App. Div. 2021).

Officer Grady testified he demanded Dorisme's identification because he had no seatbelt on. (Sa22; 1T 9-24) However, as noted by the trial court, by the time O'Grady arrived on scene, the Hyundai had been parked for two minutes. (Sa22). Sgt. DePinho did not make any reference to a seatbelt violation, either to the occupants of the vehicle, or over the radio. (Sa22) Because O'Grady did not observe the Hyundai being driven and was not present when it first parked at the Wawa, he could not have known whether or not Dorisme was wearing a seatbelt when the vehicle was being operated. (Sa22) O'Grady never mentioned the alleged seatbelt violation to Dorisme and did not issue a seatbelt summons to Dorisme. (Sa22)

On appeal, the State argues that the alleged seatbelt violation "clearly was not the basis for him asking defendant for identification." (Sb14) Instead, the State argues that the officers had reasonable suspicions to "investigat[e] whether this car was stolen, whether it was involved in the report of an attempted car burglary and why the front and back license plates were

removed." (Sb14) However, the license plates were provided to the officers, enabling them to check the registration; there is nothing in the record suggesting that a registration check suggested the car was stolen.

Moreover, the record is completely devoid of any basis on which to suspect that this particular car was involved in the report of an attempted car burglary. First, there is no testimony as to when or where or how close the attempted burglary took place—simply that it was "in the area" or "near" Vauxhall Road[2] "around the same time." (1T 8-17 to 20, 28-10 to 18) There was no testimony as to any description of the suspect(s) in the burglary—whether they were on foot or in a car, what they looked like or what they were wearing. There was no testimony as to how many cars other than the Hyundai were on Vauxhall Road at that time. Thus, there was simply no particularized basis to connect the Hyundai to the attempted burglary. Because it was the State's burden to present evidence to justify the challenged aspects of the seizure and search, and it failed to do so with respect to the demand for Dorisme's identification, this failure presents an alternative basis on which the court's suppression order can be affirmed.

[2] Vauxhall Road runs from Millburn Ave in Millburn to Salem Road in Union.

CONCLUSION

For the aforementioned reasons, this Court should affirm the order of the motion court suppressing the evidence.

Respectfully submitted,

JENNIFER N. SELLITTI, Public Defender
By: ____/s/_____
SCOTT M. WELFEL, A.D.P.D.