

Supreme Court of New Jersey
DOCKET NO. 090910

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Petitioner,	:	On Petition for Certification from a
	:	Final Judgment of the Superior Court of
	:	New Jersey, Appellate Division.
v.	:	
	:	Sat Below:
JAKIL J. BRYANT,	:	Hon. Jack M. Sabatino, P.J.A.D.,
	:	Hon. Adam E. Jacobs,
Defendant-Respondent.	:	(temporarily assigned),
	:	Hon. Jeffrey R. Jablonski, J.A.D.

PETITION FOR CERTIFICATION
ON BEHALF OF THE STATE OF NEW JERSEY

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August 25, 2025

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CERTIFICATION

I hereby certify that this application is made in good faith, presents a substantial question, and is not made for purposes of delay.

/s/ *William P. Cooper-Daub*

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PRELIMINARY STATEMENT

This case presents an important question that sits at the intersection of law-enforcement officer safety and the exigent-circumstances exception, where two police officers trying to apprehend a potentially armed suspect were in an exposed position and faced ambiguity about whether the suspect was armed. This Court should grant review of the Appellate Division's published opinion, which adopted an unduly cramped view of exigency in this scenario, conflicting with this Court's precedent and generating significant consequences for public safety.

The two police officers in this case confronted an urgent and dangerous situation—the sort of situation for which the exigency exception was designed. Defendant, whom the officers knew had reportedly fired a gun during a family gathering, had just fled from police—but officers could hear him rustling in nearby brush. The two police officers detained defendant's associate at the still-unfolding scene, and she admitted that defendant had put a weapon in her backpack, but refused to elaborate further. Trying to locate and guard against a potentially armed and dangerous suspect and to assess whether he was still armed, an officer made a split-second decision to open the bag, where he immediately found a loaded gun. The officer then ceased the search, and

unloaded the gun but found it jammed. Defendant was arrested later that day and ultimately indicted for attempted murder and other charges.

In a published opinion, the Appellate Division held that the search was not justified by exigency, primarily relying on a finding that the gun was not immediately accessible to defendant or his associate at the time of the search. That decision conflicts with this Court's own precedent, which instead requires a holistic, totality-of-the-circumstances approach to exigency. Specifically, the Appellate Division failed to appreciate that police reasonably believed that a dangerous suspect remained concealed nearby and that whatever defendant had placed in the backpack would provide crucial information as to whether or how defendant was armed. It further overlooked that a loaded handgun in a container presents risks of accidental discharge even when it is unlikely a suspect could reach in and grab it. And it compounded its error by failing to consider any of the other factors this Court has identified as relevant to exigency.

The panel's cramped understanding of exigency risks inviting mischief in future cases involving potentially armed suspects. This opinion, if left on the books, could lead trial courts to conclude that officers in this scenario only face danger if the weapon is immediately accessible to a defendant and that the courts need not assess other factors bearing on exigency. And police officers, in turn, may hesitate or decline to take modest steps to secure weapons in confronting

potentially armed and violent suspects, jeopardizing both officers and the public. Under the proper standard for exigency, it is objectively reasonable for an officer to determine that two distinct risks—that a suspect remained armed and that a potentially loaded gun would discharge in the police car—demanded an immediate response. This Court should grant review to reaffirm the proper standard for exigency.

STATEMENT OF THE MATTER INVOLVED

On February 15, 2022, Highland Park Police Officers Kevin Garrity and Roland Sams responded to an apartment for a reported shooting. (Pa2-3; 1T6-4 to 7-23, 49-8 to 18).² They learned that defendant had argued with his brother’s girlfriend, pointed a pistol at her, and—when his brother tried to grab it—fired a shot and then fled. (Pa2-3; 1T9-2 to 7). Several people were present, including two young children, but nobody was injured. (Pa2-3; 1T7-17 to 23).

Police also learned defendant was wanted in New Brunswick because he had reportedly tried to shoot his girlfriend and struck her head with his pistol. (Pa1-3). A be-on-the-look-out (BOLO) was issued with photos of defendant and his car, a white Toyota Camry. (Pa3; 1T5-21 to 6-7, 9-2 to 10-16).

² Some facts derive from the State’s brief opposing suppression. See (Pa1-6). Defendant, for purposes of his motion reply brief, “accept[ed] the Statement of Facts set forth in the prosecution’s opposition.” (Pa7).

As captured on the police officers' body-camera footage, on February 23, 2022, at around 4:30 a.m., Garrity found defendant's car parked on a residential street in Highland Park. (Pa9 at 4:38:30; 1T4-22 to 6-3).³ He radioed Sams, the only other Highland Park officer on duty that night, who met Garrity at the Camry. (1T5-10 to 6-3, 11-1 to 12-1, 83-22 to 23). Garrity saw two people in the Camry, a man in the driver's seat and a woman in the passenger seat. (1T12-23 to 13-5). The officers radioed for mutual aid from Edison or New Brunswick police, then moved their cars farther from the Camry. (1T14-1 to 19). The officers believed that defendant was armed and dangerous. (1T29-9 to 14).

While the officers waited for backup, the woman, C.G.,⁴ exited the Camry with a backpack and walked toward Garrity. (1T14-22 to 16-1). Moments later, defendant exited the car. (1T15-5 to 16-5, 25-1 to 8). Sams identified himself as a police officer and yelled to stop, but defendant ran away between houses. (Pa8 at 4:46:55; 1T16-6 to 17-5). Sams did not chase defendant because he did not want to leave Garrity alone with C.G. (1T17-7 to 16).

Sams frisked C.G., handcuffed her, and put her in Garrity's police car to detain her for questioning once the situation was safe. (Pa8 at 4:47:40; 1T18-

³ The February 23 body-worn-camera video is included in the appellate record.

⁴ As charges against C.G. were expunged, she is referred to by her initials.

22 to 19-16, 61-22 to 25). Meanwhile, Sams and Garrity could hear defendant moving around in nearby brush. (Pa8 & 9 at 4:48:22; 1T19-14 to 20-2). After Sams put C.G.'s backpack and belongings in the police car, C.G. said there was "something" in her bag. (Pa8 at 4:50:08; 1T20-17 to 21-13). Sams asked what she meant, and C.G. said it was "a weapon." (Pa8 at 4:50:08 to 4:50:34; 1T21-22 to 22-5). Sams picked up the backpack, noting that he could feel something inside. (Pa8 at 4:51:07). He unzipped one pocket, immediately saw a loaded semiautomatic pistol, and removed it. (Pa8 at 4:51:09). Sams removed the gun's magazine but could not move the slide to clear the chamber. (Pa8 at 4:51:17 to 4:51:39; 1T22-21 to 24-12). Garrity told Sams to put the gun back in the bag, commenting that he did not want any "misfiring." (Pa9 at 4:51:40). Sams kept trying to clear the chamber, worrying aloud that the gun could go off, until Garrity told him again to leave it in the backpack. (Pa8 & 9 at 4:51:45 to 4:52:20). Sams explained at the suppression hearing that he did not seek and wait to obtain a warrant for the bag because the potential presence of a weapon led him to search it immediately for the "safety of all of us." (1T37-25 to 38-13). Defendant was apprehended and arrested later that day. (1T25-1 to 8).

A Middlesex County grand jury returned four indictments against defendant for the events in both Highland Park and New Brunswick. It indicted defendant for a variety of crimes, including first-degree attempted murder,

second-degree unpermitted handgun possession, second-degree gun possession for an unlawful purpose, second-degree certain persons not to have weapons, and fourth-degree criminal mischief. (Pa10-18).

Defendant moved to suppress the gun. (Pa19). Judge Joseph Paone denied the motion. (1T83-13 to 104-11). Finding Officer Sams forthright and credible, the judge found that the police had reasonable suspicion to detain C.G., (1T85-18 to 25, 94-5 to 14), and held that the backpack search was justified by the exigent-circumstances warrant exception, (1T102-24 to 104-11), and as an extension of a justified automobile search, (1T102-3 to 23). Defendant pleaded guilty to second-degree gun possession for an unlawful purpose, second-degree certain persons not to have weapons, and fourth-degree criminal mischief, with all other charges dismissed. (Pa20, 22; 2T4-9 to 5-10). Judge Paone sentenced defendant to the recommended aggregate prison term of eight years, with five years of parole ineligibility. (3T13-14 to 14-22).

Defendant appealed, and the Appellate Division reversed the suppression ruling in a published opinion and vacated the judgment of conviction. (Pa31). The panel held that defendant had standing to challenge the backpack search and that neither the automobile exception nor exigency exception justified the search. (Pa40-51). As to exigency, the panel found “no realistic possibility” defendant or C.G. could have taken the gun from the backpack while in the

police car and that C.G.'s cooperation belied any desire to grab the gun, and thus found that the State had not demonstrated exigent circumstances and the officers should have "paused" to request a search warrant. (Pa48-49).

QUESTION PRESENTED

Whether exigent circumstances justify a limited search to identify and mitigate the dangers posed by a weapon at a scene where a potentially armed and dangerous suspect seemingly remains nearby.

ARGUMENT

CERTIFICATION IS WARRANTED TO REVIEW A PUBLISHED DECISION ADOPTING AN UNDULY EXACTING EXIGENCY TEST.⁵

The Appellate Division's opinion conflicts with this Court's precedent by reducing the exigency analysis in cases where the police confront an unsecured weapon to solely whether the weapon is immediately accessible to a suspect. In doing so, the panel overlooked significant risks to the officers' safety, contrary to the holistic approach to exigency this Court's precedents require. The panel compounded this error by failing to assess the other factors in the governing exigency analysis. If left undisturbed, trial courts following this opinion risk

⁵ While the State disagrees with each aspect of the Appellate Division's ruling, this petition focuses only on the panel's exigency holding, given its conflict with this Court's precedents and the mischief it could work in future cases.

concluding that the only possible danger to officer safety in this scenario that can support a finding of exigency is that someone might grab the weapon—even in the face of other dangers, in a fast-moving situation, that are substantiated by evidence. Review is needed to reaffirm the proper standard for exigency and to reverse this direct conflict with this Court’s own instructions.

A. The Decision Below Conflicts With This Court’s Precedents.

The Appellate Division’s restrictive view of officer danger conflicts with this Court’s precedents. The exigent-circumstances exception authorizes a warrantless search if officers have “an objectively reasonable basis to believe that lives might be endangered or evidence destroyed by the delay necessary to secure a warrant.” State v. Miranda, 253 N.J. 461, 480 (2023). It applies where the State establishes two elements by a preponderance of the evidence: (1) “the search was premised on probable cause” and (2) “law enforcement acted in an objectively reasonable manner to meet an exigency that did not permit time to secure a warrant.” Ibid. Although the analysis of the exigency is fact specific, this Court identified six factors always “to be considered in the court’s inquiry”:

- (1) the seriousness of the crime under investigation,
- (2) the urgency of the situation faced by officers,
- (3) the time it would have taken to secure a warrant,
- (4) the threat that evidence would be destroyed or lost or people would be endangered unless immediate action was taken,
- (5) information that the suspect was armed and posed an imminent danger, and
- (6) the strength or

weakness of the probable cause relating to the item to be searched or seized.

[Id. at 481 (quoting State v. Manning, 240 N.J. 308, 333-34 (2020)).]

These factors are not exclusive—instead, in its totality analysis, this Court has also found relevant to an exigency analysis the time of day, location and nature of the neighborhood, ratio of officers to suspects, see State v. Minittee, 210 N.J. 307, 321 (2012) (citing State v. Pena-Flores, 198 N.J. 6, 29 (2009)),⁶ and whether probable cause arose suddenly and unexpectedly, see State v. Nishina, 175 N.J. 502, 516 (2003). At bottom, the inquiry “is not whether the police could have done something different, but whether their actions, when viewed as a whole, were objectively unreasonable.” Minittee, 210 N.J. at 323.

The Appellate Division boiled down this entire analysis into effectively a single issue—whether defendant or C.G. would likely be able to access the bag potentially containing the dangerous weapon. Because it concluded that neither defendant nor C.G. likely could have accessed the bag, it concluded that this fact alone made a warrantless search impermissible. But in taking such a narrow

⁶ While these cases assessed exigent circumstances when that was an element of the automobile exception, this Court has often relied on such cases when considering the exigency exception. See, e.g., Manning, 240 N.J. at 336-37 (citing Minittee’s exigency analysis); In re J.A., 233 N.J. 432, 448 (2018) (quoting State v. Dunlap, 185 N.J. 543, 551 (2006)); State v. Hathaway, 222 N.J. 453, 468 (2015) (applying Pena-Flores to hotel search).

view, the panel conflicted with this Court's precedents in two independent ways: it took an unduly cramped view of the urgent threats to officer safety during this exigent situation and it failed to engage in the required multifactor analysis.

1. As to the former, in assessing the imminent threat to officers, the panel overlooked two significant and emergent reasons, both tied to officer safety, that justified a quick check of C.G.'s bag for a potential weapon. The first is the risk that the suspect in a recent shooting, lurking nearby, still had a weapon and that the presence or absence of a weapon in the bag would provide the officers with key information as to the threat defendant still posed. As laid out above, these two officers confronted a potentially armed suspect and associate in the middle of the night, as the requested backup had not yet arrived. Defendant could have had a gun, but the two officers had incomplete information to know whether he still had it. The officers knew defendant had recently been carrying a pistol and was seemingly lurking nearby, and C.G. had just told them that defendant placed "a weapon" in her bag. See (Pa8 at 4:50:36). But unless the officers could quickly check the bag, they could not know if that was true. And if a quick check of the bag produced no gun, that would be crucial information, as part of a fast-moving situation, showing that the shooting suspect moving around in nearby brush almost certainly still had a firearm—a key threat to their safety. Said another way, briefly opening the bag to check for a gun was a critical way

to get immediate information as to whether defendant, lurking nearby, was still armed—and thus how dangerous the situation was for the officers and how safe it would be to attempt to apprehend defendant.

That is a type of exigency that this Court has found justifies a limited search—even when there is no risk of the suspect accessing the item searched. In Minitee, police were in pursuit of four armed robbers in a car, but two escaped into the night. 210 N.J. at 312-13. While some officers searched for the missing suspects and a discarded gun, the car was towed to the station and searched. Id. at 313-15. But exigency existed justifying the search of the car—even though there was no risk that a suspect would access the car—because of factors “include[ing] an armed robbery, at least two perpetrators on the run who were possibly armed, a search for those perpetrators that spanned several municipalities, and an attempt to find a discarded weapon before an innocent bystander was injured or it was taken and hidden for future criminal activity” and, further, because the officers were uncertain whether the suspects who had escaped into the night “were not in the immediate vicinity and able to fire at them at will.” Id. at 322. Here, similarly, confirming whether defendant, who had just fled but potentially remained nearby, had left behind his gun provided key information as to whether he was more or less likely to be armed—important information to preserve the safety of the officers trying to catch him.

The second source of danger is that if the backpack did contain a weapon, a loaded gun could discharge in the squad car. Once C.G. admitted her backpack contained a weapon, police were doubtless going to seize the bag and transport it to the station, rather than leave it behind at the unfolding scene. And myriad authorities recognize the danger of keeping or transporting a loaded gun in a car. See, e.g., N.J.S.A. 2C:39-6(g) (requiring a gun transported in vehicle to be unloaded); State ex rel. Div. of Nat. Res. v. Cline, 488 S.E.2d 376, 383 (W. Va. 1997) (collecting instances of guns discharging during transit in cars); 1 Windle Turley & James E. Rooks, Jr., Firearms Litigation: Law, Science, and Practice § 14.04 (1988) (advising that guns “should never be carried loaded inside an automobile”); Nat’l Shooting Sports Found., “Firearm Safety - 10 Rules of Safe Gun Handling,” <https://tinyurl.com/bdcsh6ja> (last visited Aug. 25, 2025) (“A loaded gun has no place in or near a car ...”). Courts have heard cases where a loaded gun in a vehicle discharged and injured a passenger when the vehicle hit a bump, Hutcherson v. Amen, 572 P.2d 879, 879-80 (Idaho 1977), and where a gun was modified, making it more susceptible to unintended discharge, e.g., Helduser v. Kimmelman, 191 N.J. Super. 493, 496-97 (App. Div. 1983) (noting handgun had an unsafe “hair trigger,” attributed to modifications).

In other words, apart from whether C.G. could have accessed the backpack from the backseat, the mere presence of a firearm in the bag posed a danger to

the cars' occupants if it was loaded or unsafely modified. That justified a quick search for officer safety too: C.G. informed the two officers that there was a weapon in the bag. The Appellate Division dismissed this risk, finding there was no risk that the bag contained an even more dangerous weapon like a bomb, (Pa38 n.6), but overlooked the dangers the officers faced from leaving a loaded gun in the bag while driving to the station. (Which, it ultimately turned out, was precisely what the bag contained.) Preserving the safety of the officers and C.G. thus necessitated checking the bag for a weapon and taking all possible steps to make it safe for transport and handling.

But the opinion below failed to properly assess these risks to officer safety. For one, the Appellate Division failed to acknowledge the risks noted above, instead considering only the risk that C.G. or defendant might obtain the weapon from the backpack and concluding that this risk was eliminated once officers secured the backpack in the car. (Pa48). Whatever the merits of even that holding, it misses the actual dangers police faced in this case, and elevates the defendants' access to the bag as the dispositive question in an urgent officer-safety situation. Courts following this opinion thus risk concluding that when police are in pursuit of a potentially armed suspect and confront a bag holding a gun, exigency arises only if it is immediately accessible by a suspect—and that no other risk to public safety can support a finding of exigency. And widespread

adoption of this cramped view of officer safety may even cause officers to delay opening the container even when prompt action is needed to ensure their safety.

2. The panel magnified that error by failing to weigh the other recognized exigency factors—which may lead trial courts in similar cases to conclude that the exigency analysis reduces to the sole question of whether the weapon is immediately accessible to a suspect. This Court has identified at least five other factors relevant to a finding of exigency. See Miranda, 253 N.J. at 481; supra at 8–9. The panel discussed none of them, however, (Pa48-50), though each of the factors, properly examined, also support a finding of exigency:

Seriousness of the crime under investigation. Officers were pursuing an armed suspect who had pointed a gun at a woman and shot it in a home with several people present, and so they were clearly investigating “serious offenses.” E.g., Miranda, 253 N.J. at 481 (weighing “the seriousness of the crime under investigation”); see also Mintee, 210 N.J. at 322 (finding exigency where police were pursuing perpetrators of an armed robbery who were possibly armed). The Appellate Division did not discuss this factor in its analysis.

Urgency of the situation. The two officers were faced with an uncertain and quickly evolving situation. They had located a potentially armed suspect who had demonstrated willingness to fire his gun, who then ran out of the car. They had detained his associate but not yet been able to speak to her because

they could still hear the suspect moving in the nearby brush, posing a potential threat. Requested backup had not yet arrived. It was thus imperative for the officers to quickly gain an understanding of their surroundings, including confirming whether defendant's gun was still in his possession or was instead in C.G.'s bag. This consideration, too, played no role in the opinion below.

Time to secure a warrant. Although the time needed to obtain a warrant is not established by the record, these events occurred at around 4:45 a.m. In Miranda, where the time to get a warrant was not in the record, this Court found that this factor did “not favor either party’s position.” 253 N.J. at 483. State v. Witt, 223 N.J. 409 (2015), however, cited studies finding that obtaining even a telephonic warrant often took one to two hours, id. at 436, sharply contrasting the panel’s suggestion below that the officers should have “paused to contact a judge and requested a warrant.” (Pa49). Having one officer try to locate a dangerous and possibly armed suspect in the dark, while the other focused on attempting to contact a judge in the pre-dawn hours to obtain a search warrant, “was not a reasonable option.” See Miranda, 253 N.J. at 480.

Information that the suspect was armed and dangerous. The officers were pursuing defendant because he reportedly recently endangered several people by firing a gun in their apartment. The officers thus reasonably believed that defendant was armed and dangerous, weighing in favor of exigency. And, as

laid out above, even if the bag did not contain a firearm, that would have provided important information as to the threat defendant posed.

Strength of probable cause. The panel found it unnecessary to decide whether probable cause existed here because it found no exigency, (Pa50), but Miranda confirms that the strength of probable cause is part of the analysis of the exigency prong, 253 N.J. at 481. And there was ample probable cause to believe that C.G.’s bag contained evidence of a crime, as C.G. had just told Sams that defendant—who was suspected of crimes committed with a gun—had put a weapon in her backpack.

Other factors this Court has identified as relevant to exigency also showed an exigency had existed here. In particular, the events unfolded suddenly and unexpectedly, and police did not know at the time that they would find defendant that night, that defendant would escape from the car nearby, or that C.G. would say defendant had put a weapon in her backpack. See Nishina, 175 N.J. at 516. Further, the incident occurred in the pitch-black early-morning hours, and there were only two officers to apprehend two suspects, one of whom was detained while the other—who was potentially armed and dangerous—had disappeared into the night but was still probably nearby. See Minitee, 210 N.J. at 321; State v. Dunlap, 185 N.J. 543, 550 (2006) (rejecting exigency in arrest by ten officers but noting that “[d]ifferent facts, such as a roadside stop effectuated by only one

or two officers, would likely have changed the calculus”). In short, “when the police act reasonably in the face of genuine exigency, their warrantless conduct is sustainable as part of the balancing of interests that constitutes the bulk of [this Court’s] search-and-seizure jurisprudence.” State v. DeLuca, 168 N.J. 626, 634 (2001). That is precisely what happened here.

B. The Interests Of Justice Further Warrant Certification.

In adopting an unduly cramped understanding of exigency, the opinion below hampers law enforcement’s ability to ensure the safety of themselves and the public. An unfortunate reality is that police frequently encounter dangerous weapons, often in fast-moving situations with unpredictable suspects. See, e.g., State v. Ross, 256 N.J. 390, 394 (2024); State v. Allen, 254 N.J. 530, 536-37 (2023); State v. Gamble, 218 N.J. 412, 419-20 (2014). If the published opinion below stands, an officer pursuing a potentially armed suspect who encounters a container with a weapon may decline to take a simple confirmatory step to learn whether it does or does not contain a weapon, which could mitigate the danger. The opinion therefore risks putting officers to the untenable choice of preserving their safety (and the safety of bystanders) or preserving evidence. The public-safety consequences of the Appellate Division’s decision to narrow the exigency exception thus further counsels in favor of certification.

CONCLUSION

This Court should grant the State's petition for certification.

Respectfully submitted,

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DATED: August 25, 2025