

## RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0178-16T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DARRYL A. ROUNDTREE, CRAIG L.  
OWENS, JR., TYERICE D. PEACE  
and MAURICE E. PEACE,

Defendants-Respondents.

---

Argued May 17, 2017 – Decided July 12, 2017

Before Judges Alvarez and Accurso.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Indictment No.  
16-04-1114.

Linda A. Shashoua, Assistant Prosecutor,  
argued the cause for appellant (Mary Eva  
Colalillo, Camden County Prosecutor,  
attorney; Ms. Shashoua, of counsel and on  
the brief).

Tamika T. McKoy argued the cause for  
respondent Darryl A. Roundtree (McKoy Law  
Firm, LLC, attorneys; Ms. McKoy, of counsel  
and on the brief).

Tamar Y. Lerer, Assistant Deputy Public  
Defender, argued the cause for respondents  
Craig L. Owens, Jr., Maurice E. Peace and

Tyerice D. Peace (Joseph E. Krakora, Public Defender, attorney; Ms. Lerer, of counsel and on the brief).

PER CURIAM

We granted the State's motion for leave to appeal from the July 29, 2016 order granting motions by defendants Darryl A. Roundtree, Maurice E. Peace, Tyerice D. Peace and Craig L. Owens, Jr. to suppress evidence seized pursuant to a warrantless search. The State argues:

THIS COURT SHOULD REVERSE THE MOTION JUDGE'S SUPPRESSION ORDER, AS THE OFFICER'S KNOCK ON THE WINDOW OF A PARKED CAR, WITHOUT MORE, WAS MERELY A FIELD INQUIRY, AND IT WAS NOT THE "FRUIT" OF THE UNRELATED INVESTIGATORY STOP OF A PEDESTRIAN, MUCH LESS OF ANYTHING "POISONOUS." (Raised Below).

Having reviewed the record and heard oral argument, we affirm, substantially for the reasons expressed by Judge Schuck in his opinion from the bench issued on the same day as the order.

The stop at issue took place in Brooklawn in the early morning hours of New Year's Day 2016. Brooklawn officers McKenney and Nicholas were in a marked police car patrolling in the area of the Brooklawn Diner on Route 130. They were the only two witnesses at the suppression hearing.

McKenney testified that as they drove north, he saw a man "coming from the back of the Brooklawn Diner towards a vehicle parked on the side." The diner is open twenty-four hours a day,

every day, and is situated in the middle of a large parking lot. According to the officer, it was "[r]ight around . . . 12:30 [a.m.], so a lot of people were out," and he and his partner were "on high alert." McKenney told the court, the man, later identified as defendant Maurice Peace, caught his attention because "[n]ot many people are usually back there. It's where the trash dumps are. There's -- no one parks back there, so I just thought it was suspicious."

McKenney pulled the police car into the parking lot "to see what was going on." As he pulled around the rear of the diner, Peace was leaning into the driver's side window of a BMW parked on the side of the building. The BMW was in a marked parking space, nosed in toward the diner. The engine was not running. McKenney pulled up behind the BMW, parking perpendicular to it.

When he saw the police car, Peace moved away from the BMW and got up on the sidewalk leading toward the diner's entrance. McKenney testified he got out of his patrol car, identified himself as "police," told Peace to stop, and asked in a "normal" tone, "What are you doing around here?" Peace told McKenney he was "waiting for a ride." McKenney asked him if he was with the BMW. Peace told the officer "Yes, they just gave me a ride here." Noticing the BMW had tinted windows and seeing "a male

in the passenger seat . . . moving around," McKenney directed his partner to "check out what was going on."

Officer Nicholas testified that after they pulled in and parked behind the BMW, he got out and stood "away from the vehicle to the right side of it" listening as McKenney addressed Peace. When McKenney "ordered [him] to see what the other occupants of the vehicle were doing," Nicholas, in plain clothes but with a gun holstered on his thigh, approached the BMW. Although aware the driver's window was open, allowing him to see into the car, no one was sitting in the driver's seat. Nicholas knocked instead on the front passenger window.

Nicholas acknowledged on cross-examination that the occupants of the car could see McKenney speaking to Peace and would not know whether the police were detaining him. Nicholas insisted Peace was not detained, but was free to have ignored McKenney's command to stop and continued on his way. Nicholas also acknowledged he was essentially blocking the passenger side door and the exit of anyone in the passenger seat of the BMW. He disputed, however, that the officers had "barricaded" the BMW by parking their police SUV perpendicularly behind it. Nicholas testified "it wasn't like they couldn't back up. There was enough clearance for them to back up and to move that vehicle out either way." He did concede that his idea of clearance

might be different from that of the occupants of the BMW. Nicholas also maintained that had the front seat passenger "walked around to the driver side and started backing out," refusing to speak to the police, "[t]hey would have been good to go."

In response to Nicholas's knock on the window, a man subsequently identified as defendant Owens opened the car door. When he did, Nicholas smelled the odor of burnt marijuana. He asked Owens where the marijuana was. Owens replied there was no marijuana in the car. Nicholas saw movement in the back seat and ordered the occupants to sit still. When they did not comply, Nicholas opened the backdoor. As he did so, he saw the rear seat passenger, later identified as defendant Roundtree, kick a loaded Smith & Wesson .38 special under the front seat.

All of the men were arrested, including the other back seat passenger, Tyerice Peace. Searches incident to arrest revealed both back seat passengers were in possession of counterfeit currency. A subsequent search warrant for the car led to the discovery of additional counterfeit currency and a metal grinder. No marijuana was found on the men or in their car.

After chronicling in careful detail the testimony we have summarized here, Judge Schuck reviewed the law on field inquiries, investigative detentions and warrantless arrests.

Applying that law to the facts, Judge Schuck concluded the officers initial stop of Maurice Pierce was not a field inquiry, as the State maintained, but an investigative detention. He explained:

McKenney entered the lot for the purpose of questioning Maurice Peace . . . . He did not ask [Peace] any introductory questions of the sort I talked about when I was defining [a] field inquiry. He did order Maurice Peace to stop; therefore, under those circumstances notwithstanding his relatively calm demeanor, that was not a field inquiry. He ordered him to stop. That's the reason he went in there in the first place and didn't ask him any of the introductory questions, and so the situation giving rise to a field inquiry does not exist there.

With respect to the question of whether it was a valid investigatory stop, I conclude that it was likewise not a valid investigatory stop. That is because of the definition that I just set forth there [in the part of the opinion not quoted] also was not met. There was no reasonable basis to suspect that the defendant, Maurice Peace, was engaged in any criminal wrongdoing.

The area behind the diner was part of the paved parking area surrounding the diner structure. Cars could drive all the way around the diner. There were no signs, fences, or gates restricting access of the public to that area, either on foot or by car. The area contained dumpsters used by the diner and a freezer for the diner connected to the diner.

The diner generally is opened 24 hours a day, seven days a week and indeed was open

and serving customers on this occasion at approximately 12:30 a.m. on New Year's Day morning. Defendant Maurice Peace was simply walking from the area behind the diner in a counterclockwise direction as viewed from above, heading in the direction of the BMW parked on the side of the diner and of the front main entrance of the diner. Accordingly, this was not a valid investigatory stop.

By the way, I do note that I reject the racial profiling argument that some of the defendants advanced because there's nothing in the record to support that conclusion. It takes more than simply noting that the police officers were white and the defendants were black to conclude that the interaction of the police with the black men was based on racial profiling. If that were true, every encounter between a white police officer and a black person could be characterized as racial profiling and certainly that is not the case. I conclude that the officers were acting in good faith. They were indeed being aggressive in undertaking their jobs to protect and serve the public; however, if Maurice Peace captured the attention of the police, before they could have lawfully stopped Mr. Peace, it is necessary for them to have conducted a further investigation or fact-finding to determine if a lawful basis to stop him existed, see State v. Wilson, 178 N.J. 7, 15-16 (2003).

A field inquiry could have [been] pursued, but as discussed above, no proper field inquiry was conducted in this particular case.

I next considered the encounter between the police, particularly Officer Nicholas with the other defendants occupying the BMW. Officer McKenney, as discussed above,

entered the parking lot to stop and to question the defendant, Maurice Peace, about what he was doing. He had not at that point in time noticed that the BMW was even there at all. He first noticed it when he pulled into the lot and saw the defendant, Maurice Peace, leaning into the driver's window, open driver's window of the BMW. There was nothing unlawful or suspicious about the BMW as it sat parked in a regular marked parking space inside the parking area of the Brooklawn Diner. The Police Officer McKenney parked the police car perpendicular behind and relatively close to the BMW. As discussed above, Officer McKenney and Officer Nichols – Nicholas both exited the car. The defendant, Maurice Peace, started walking towards the area of the front of the diner where the entrance is and Officer McKenney told him to stop, which Maurice Peace did do.

Officer McKenney asked the defendant, Maurice Peace, if he was associated with the BMW and Maurice Peace replied that he had gotten a ride there in that vehicle, that he was waiting for another ride. Because Officer McKenney, as I discussed, noted some movement of a male passenger or a passenger, a passenger in the car, he directed his partner, Officer Nicholas to go check it out.

I conclude that's not – he didn't really notice the movement of a male passenger, but a passenger because both officers clearly testified and I believe and find to be true that they couldn't see well enough inside the vehicle to identify particular people; therefore, he didn't know then whether any passengers were male or female. So he directed Nicholas to go and check out what was going on with the vehicle, what the occupants were doing, as I said before.



This led ultimately, and I described in more detail earlier, [in the part of the opinion not quoted], to the door of the BMW being opened from the inside and then Nicholas opening the backdoor of the vehicle, the rear side passenger door and then ultimately seeing the gun on the floor. All the defendants were thereafter arrested and charged.

Given that nothing brought the attention of the two police officers to the BMW other than the apparent connection between defendant, Maurice Peace, and the vehicle, there is no lawful basis for the officers to approach and ultimately seize the vehicle and its occupants, the defendants, Owens, Roundtree, and Tyerice Peace.

Accordingly, any evidence seized after the unlawful stop of the defendant, Maurice Peace, is tainted as the fruit of the poisonous tree, Wong Sun v. United States, 371 U.S. 471 (1963), State v. Shaw, 213 N.J. 398, 421 (2012), Current N.J. Arrest, Search, and Seizure by Kevin G. Byrnes, Gann, chapter 33, 2016-2017 edition.

The judge went on to analyze, and reject, seizure of the gun recovered in the BMW under the independent source and inevitable discovery doctrines because no evidence in the record suggested "that apart from the unlawful detention of Maurice Peace, the police had any reason at all to otherwise pay attention to the BMW."

Finally, the judge considered the search and seizure of the BMW standing alone, independent of the stop and seizure of Maurice Peace.

Alternatively, the encounter by Officer Nicholas with the [BMW] and its occupants was not a valid field inquiry or a valid investigatory stop. I described before that the police car was parked close behind and perpendicular to the BMW which was nose end to the diner, an armed officer knocked on the door, impliedly calling for some manner of response from the occupants within the vehicle. The windows and doors on that passenger side of the vehicle were closed at that point in time. No preliminary questions were – as to whether the occupants in the vehicle wanted to answer questions were asked, and presumably the officer would have had to shout or speak loudly as to such questions as to them from his position or go around to the open driver's window to talk to the occupants.

He did neither of those things, he simply knocked on the car door. He had no reasonable and articulable suspicion of wrongdoing when he did so. . . .

This is not a field inquiry, but an investigatory stop with no legally sufficient justification. Accordingly, the evidence obtained pursuant to the subsequent search is suppressed.

Our limited standard of review on a motion to suppress is well established. State v. Gamble, 218 N.J. 412, 424-25 (2014). We defer to the factual findings underpinning the trial court's decision on the motion, unless they were "clearly mistaken" or

"so wide of the mark" that the interests of justice require appellate intervention. State v. Elders, 192 N.J. 224, 245 (2007). Deference "is required because those findings 'are substantially influenced by [an] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Gamble, supra, 218 N.J. at 424-25 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Our review of the trial court's application of the law to the facts, of course, is plenary. State v. Hubbard, 222 N.J. 249, 263 (2015).

Applying those standards here, it is obvious there is no basis for overturning the trial judge's meticulous factual findings or his careful legal analysis. As our Supreme Court recently reiterated, "[t]he difference between a field inquiry and an investigative detention always comes down to whether an objectively reasonable person would have felt free to leave or to terminate the encounter with police," measured from the defendant's perspective. State v. Rosario, \_\_\_ N.J. \_\_\_, \_\_\_ (2017) (slip op. at 11). Here, we agree with Judge Schuck that there is no question on this record that an objectively reasonable person in defendant Maurice Peace's position would not "have felt free to leave or to terminate the encounter with police." Ibid.

Moreover, the Court's opinion in Rosario also makes plain that the BMW was "seized" from the moment the officers pulled their marked SUV in behind it, blocking its departure, even viewing that act as "unrelated" to the detention of defendant Maurice Peace as the State urges.<sup>1</sup> Id. at 13 (noting that "partially blocking in [defendant Rosario's] car from the rear, activating the alley light in order to flood the area with light, and exiting and proceeding directly to defendant to address her" was "not a garden-variety, non-intrusive, conversational interaction between an officer and an individual"). Because the occupants of the BMW were faced with an investigative detention at the inception of the encounter without any reasonable or articulable suspicion of any criminal activity on their part, the stop was unlawful and the evidence

---


<sup>1</sup> Because we analyze the reasonableness of any stop based on the totality of the circumstances, State v. Davis, 104 N.J. 490, 504 (1986), we reject the State's position that Officer Nicholas's knock on the window of the BMW was a field inquiry "unrelated" to the officers' unlawful seizure of defendant Maurice Peace. The record makes clear that Officer McKenney asked Maurice Peace only two or three questions, one of those being whether he was "connected" to the BMW. It is thus clear, that treating the seizure of the BMW as "independent" of the seizure of defendant Maurice Peace has no support in the evidence. The State's argument that Rosario is distinguishable because Rosario's car was completely blocked is likewise without support in the Court's opinion in that case. Rosario, supra, slip op. at 13.

seized properly suppressed. See State v. Rodriguez, 172 N.J. 117, 132-33 (2002).

Accordingly, we affirm, substantially for the reasons set forth by Judge Schuck in his comprehensive and carefully analyzed opinion from the bench on July 29, 2016.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION