

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2035-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TERRANCE L. JOHNSON,
a/k/a MALCOM PIERCE,

Defendant-Appellant.

APPROVED FOR PUBLICATION

June 6, 2023

APPELLATE DIVISION

Argued March 28, 2023 – Decided June 6, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 19-05-
1438.

Tamar Y. Lerer, Assistant Deputy Public Defender,
argued the cause for appellant (Joseph E. Krakora,
Public Defender, attorney; Tamar Y. Lerer and Austin
J. Howard, Assistant Deputy Public Defender, of
counsel and on the briefs).

Frank J. Ducoat, Special Deputy Attorney General/
Acting Assistant Prosecutor, argued the cause for
respondent (Theodore N. Stephens II, Acting Essex
County Prosecutor, attorney; Lucille M. Rosano,
Special Deputy Attorney General/Acting Assistant
Prosecutor, on the brief).

The opinion of the court was delivered by
SUSSWEIN, J.A.D.

Defendant Terrance L. Johnson appeals from his guilty plea convictions for unlawful possession of controlled dangerous substances (CDS) with intent to distribute. He contends the trial court erred in denying his motion to suppress heroin and cocaine seized by police during an investigative detention. Detectives observed defendant commit traffic violations, but defendant parked and exited the vehicle he was driving before they could effectuate a stop. By the time one of the detectives asked defendant where in the vehicle the credentials were stored, defendant had already been secured in the backseat of a police car. Defendant was not given the opportunity to reenter the parked vehicle to retrieve the credentials himself. The detective observed the drugs on the passenger-side floorboard while he was looking in the glove compartment for the vehicle credentials. Defendant contends the police entry into the vehicle was unlawful because he was never afforded a meaningful opportunity to produce those documents on his own.

This case presents a novel question concerning the vehicle registration search exception to the warrant requirement. That exception authorizes police to enter a lawfully stopped vehicle to conduct a pinpointed search for a paper registration certificate if the motorist is unable or unwilling to produce that

document after having been provided a meaningful opportunity to comply with the police request for it. State v. Terry, 232 N.J. 218, 222 (2018). The issue raised in this appeal is whether police may initiate a search under this limited exception when (1) the detained motorist is outside the vehicle at the time of request for the registration certificate, and (2) the officer determines it would be unsafe to allow the motorist to reenter the vehicle to retrieve it. We must determine whether, in those circumstances, detained motorists must still be afforded a meaningful opportunity to produce the registration certificate themselves before police are allowed to enter the vehicle to search for it, or whether that element of the registration search exception may be excused in deference to concerns for officer safety.

In addressing this question of first impression, we are mindful that in Terry—our Supreme Court's most recent registration search exception case—the justices were sharply divided on whether to retain this exception to the warrant requirement.¹ We leave resolution of that fundamental question to the

¹ Chief Justice Rabner authored a dissenting opinion that was joined by two other justices. He stated that "[b]ecause the [registration search exception] doctrine does not rest on solid legal ground, I believe the Court should reconsider rather than reinforce the theory." Terry, 232 N.J. at 248 (Rabner, C.J., dissenting). The Chief Justice expressed concern that "[a]lthough the credentials search is supposed to be confined to areas where registration documents might normally be kept, it is not a clinical, laser-like search. An examination of the glove compartment, center console, sun visor, and

Supreme Court and focus instead on interpreting and scrupulously enforcing the "limiting principles" that fix the boundaries of the "very narrow" registration search exception as spelled out by the majority in Terry, 232 N.J. at 222–23, and by the unanimous Court in State v. Keaton, 222 N.J. 438 (2015).

After carefully examining the limiting principles announced in Keaton and re-affirmed in Terry, we conclude that providing a detained motorist a meaningful opportunity to produce the registration certificate is an indispensable prerequisite to conducting a registration search. We decline to create a categorical exemption to that prerequisite when police determine, in the exercise of their discretion, it would be unsafe to allow a motorist to reenter the stopped vehicle. Stated another way, we hold a motorist is not "unable" to produce a registration certificate within the meaning of the exception when the sole reason for that inability is a police officer's discretionary decision to prevent reentry. We stress that given the imperative of protecting officer safety, the detectives in this case were permitted to place

similar areas brings much of the car's interior into plain view" Ibid. (internal citations omitted). The Chief Justice also reasoned that advances in technology make it unnecessary to retain the exception because police can now readily obtain all the information contained in a registration certificate by means of remote access to the Motor Vehicle Commission (MVC) database. Id. at 269–71.

defendant in the police car and prevent him from reentering the parked vehicle throughout the course of the investigative detention. That law enforcement decision, however, had the effect of foreclosing a warrantless registration search, requiring the detectives instead to use other methods to investigate whether defendant was in lawful possession of the vehicle, such as an MVC database look-up.

Aside from the limiting principles recognized in Terry and Keaton, our interpretation and prospective application of the registration search exception is also informed by significant recent revisions to N.J.S.A. 39:3-29—the statute that prescribes a motorist's duty to possess and exhibit a registration certificate to police during a motor vehicle stop. Because that statute undergirds the registration search exception, those recent revisions must be considered when determining the reasonableness of a warrantless search for proof of ownership.

Under the revised statutory framework, motorists are no longer required to possess a paper copy of the vehicle registration certificate. Rather, they are now permitted to keep and exhibit the registration certificate in either paper or electronic form. The digital option may eventually render paper registration certificates obsolete, or at least rare. Furthermore, the electronic form of the registration certificate will not normally be kept in a glove compartment like a

traditional paper certificate. Rather, we expect it to be stored digitally in a cellphone. The advent of a paperless proof-of-ownership system reduces the likelihood that a physical search for a paper document would be fruitful often enough to justify the privacy intrusion authorized by the registration search exception—an intrusion that, under present law, is not predicated on a particularized finding of probable cause or even reasonable suspicion to believe that the search would yield the registration certificate.

We leave to our Supreme Court to decide whether the registration search exception survives in light of the statutory reforms enacted and implemented since Terry was decided. We have no authority to jettison an exception to the warrant requirement recognized by a majority of the Court. See Pannucci v. Edgewood Park Senior Hous. – Phase 1, LLC, 465 N.J. Super. 403, 414 (App. Div. 2020) (noting that this court may not "change the law the Supreme Court has established"). But even accepting, as we must for present purposes, this warrant exception will endure, we cannot simply ignore the recent revisions to the statutory foundation of the exception, since those revisions directly impact upon its limited purpose and narrowly drawn boundaries. To avoid the futility and needless privacy intrusion of a physical search for a paper document that need not be kept in the vehicle, we hold, prospectively, that police may not enter a detained vehicle under the authority of the registration search exception

without first asking the motorist whether the registration is stored in paper form rather than in electronic form.

The record in this case shows defendant was never afforded a meaningful opportunity to produce the registration certification himself and was unable to produce it only because he was detained in the police car. Accordingly, the detective who conducted the warrantless search was not lawfully inside the parked vehicle when he observed the suspected CDS on the floorboard. We therefore reverse the denial of the motion to suppress and vacate defendant's convictions.

I.

Defendant was charged by indictment with two counts of third-degree possession of a CDS (heroin and cocaine), N.J.S.A. 2C:35-10(a); two counts of third-degree possession of a CDS with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and (b)(3); and two counts of third-degree possession of a CDS with intent to distribute while within 1,000 feet of school property, N.J.S.A. 2C:35-7(a).

Defendant moved to suppress the cocaine and heroin, and an evidentiary hearing was convened on March 9, 2020. On September 11, 2020, the motion judge ruled the seized evidence would be admissible at trial, issuing a four-page statement of reasons.

In August 2021, defendant pled guilty to the two counts of third-degree possession of CDS with intent to distribute pursuant to a plea agreement. In December 2021, defendant was sentenced in accordance with the plea agreement to a five-year term of noncustodial probation. In addition to other penalties and fines, defendant was ordered to pay mandatory Drug Enforcement and Demand Reduction penalties of \$1,000 for each conviction. The remaining counts of the indictment and motor vehicle summonses were dismissed.

Defendant raises the following contentions for our consideration:

POINT I

THE SEARCH OF DEFENDANT'S CAR FOR THE REGISTRATION WAS ILLEGAL BECAUSE HE WAS NOT GIVEN AN OPPORTUNITY TO RETRIEVE IT HIMSELF.

POINT II

THE MATTER MUST BE REMANDED FOR RESENTENCING.

II.

A.

We first address whether the discovery of the CDS in the vehicle was lawful. We begin by recounting the relevant facts elicited at the suppression hearing and the motion judge's findings.

The State presented a single witness, Newark Police Department Detective Emanuel Pereira. On December 12, 2018, Detective Pereira and his partner, Detective Yunque, were on patrol in plain clothes and driving an unmarked police vehicle. They were not wearing body cameras, nor was their vehicle equipped with a dashboard camera.

Around 2:00 p.m., while travelling westbound on Chancellor Avenue, Detective Pereira saw a silver Hyundai Sonata pass them in the eastbound lane travelling at a high rate of speed. The driver, later identified as defendant, was the sole occupant. Detective Pereira made a U-turn and attempted to catch up to the vehicle, intending to stop it for speeding and careless driving. Before the detectives could catch up, the vehicle made a right turn onto Bayview Avenue without signaling. Detective Pereira lost sight of the vehicle. He began to "slow roll" down Bayview Avenue and saw the vehicle parked in a church parking lot.

As Detective Pereira pulled into the parking lot, he saw defendant exit the vehicle and walk past the police car heading toward the parking lot exit. Defendant was walking at a "fast pace" and "nervously" looking at the detectives. Detective Pereira knew the parked car was the same vehicle he had been following based on the license plate number. The detectives exited their

patrol vehicle, and Detective Pereira displayed his badge and ordered defendant to stop.

Detective Pereira advised defendant he was being stopped for traffic violations and asked for his driver's license. There is some ambiguity in Detective Pereira's testimony regarding whether he asked defendant only for his driver's license or whether he asked for his "credentials." On direct examination, Detective Pereira testified he asked defendant for his "credentials," to which defendant replied that he did not have a driver's license. On cross-examination, the detective testified:

[Defense counsel]: And based on that you -- you asked him for his driver's license; correct?

[Detective Pereira]: I did. And I also indicated the vehicle I observed him driving which he then stated all right, basically he almost like -- all right, yeah, you know what I was driving that car. I don't have a license that's the reason why I got out of the car, and that's my sister's car.

[Defense counsel]: Since we're talking about facts let's just stick to what was in the incident report. What's in the incident [report] is that you asked him for his driver's license, and he then stated that he -- he didn't have a license, and that it was his sister's car; correct?

[Detective Pereira]: Right. Prior to that -- prior to that after me stopping him I asked him for his credentials, and I told him why he was being stopped. He was evasive, he lied, he said he wasn't driving that car.

Detective Pereira told defendant that he saw him driving the vehicle and pointed to the parked car. Defendant could not produce a driver's license or other form of personal identification.

Detective Pereira decided to place defendant inside the police vehicle so that he would not be "free to roam around anywhere . . . near that vehicle." Defendant was not handcuffed, but detectives patted him down before securing him in the back seat of the police car. While Detective Yunque questioned defendant as to pedigree information, Detective Pereira went to the parked vehicle and opened the unlocked driver-side door. He testified that when he first opened the door, it was to look for "paperwork, and [to] see if there was any ignition damage, see if there was any door lock damage. Any of that sort before I start running plates and continue my investigation."

The detective then walked back to the police vehicle where defendant was detained and asked him where the vehicle's "paperwork" or "credentials" were. Defendant responded that they were in the glove compartment. Detective Pereira went back to the parked vehicle, closed the driver's door, and opened the unlocked front passenger door to retrieve the credentials from the glove compartment. When he opened the passenger door, Detective Pereira saw a woman's nylon pants with knotted legs and an open top lying on the floor. Inside the top portion of the pants, he saw glassine envelopes containing

suspected heroin. Detective Pereira retrieved the nylon pants and also found a plastic bag containing vials of suspected cocaine. Defendant was then placed under arrest.

Detective Pereira testified there was no opportunity for defendant to retrieve the credentials himself, nor would he have allowed defendant to do so because he found defendant to be "suspicious." Detective Pereira acknowledged, however, that defendant was not behaving violently, dangerously, or erratically. The detective explained he was "not going to give [defendant] that opportunity to even go to the vehicle." This point was highlighted on cross-examination:

[Defense counsel]: But you agree that he was not unwilling to get those credentials himself, correct, you never asked him?

[Detective Pereira]: Well, at that point I made the decision that I'm not going to allow him to.

[Defense counsel]: So, you would agree . . . that he did not indicate at any point that he was unwilling to retrieve those credentials himself; correct?

[Detective Pereira]: Right.

[Defense counsel]: And you agree he was not unable to, he wasn't physically unconscious or something like that; correct?

[Detective Pereira]: Physically he could have gone and [gotten] them himself; however, I made the determination that I'll go find the paperwork myself.

Detective Pereira was also asked on cross-examination whether he was aware the law "requires you to give a person an opportunity to get the credentials for themselves, unless they're unwilling or unable to" before conducting a credential search. Detective Pereira answered:

I'm also aware that if I pull over a vehicle, I could myself retrieve anybody's documents out of their vehicle if I feel that there's a reason to or any danger in that way. He did not have a license. He was not in the car. I'm not going to let you walk all the way back to a car to go retrieve something, you're being detained. I don't know who you are, we're going to find out who you are[.]

The motion judge determined the stop was lawful because the detectives had reasonable articulable suspicion to believe that defendant committed motor vehicle violations. The judge further found that defendant's "evasive" and "suspicious" answers to police questions established reasonable suspicion to believe he had violated additional motor vehicle laws such as driving without a license.

The judge also found, "[t]he [d]etective informed [d]efendant as to why he was being stopped and asked for his driver's license." (Emphasis added). The judge concluded the detectives had a right to enter defendant's car to check for the vehicle's ownership credentials. She reasoned that this case was factually distinguishable from State v. Lark, 163 N.J. 294 (2000) and Keaton, upon which defendant relied. She explained that "unlike Lark[,] the car's

credentials were not provided to the [d]etectives. Since [d]efendant was unable to provide the credentials, the [d]etectives could legally search for them." In distinguishing Keaton, she explained that "[d]efendant here was given an opportunity to present his credentials to the [d]etectives and was unable to do so."

The motion judge added that defendant had been detained in the back of the police vehicle because he was being evasive, lied about driving the car, and had no identification. She noted it would have been "illogical and imprudent" for the police to allow defendant to reenter the vehicle, which would have been "an open invitation for defendant, who was already uncooperative and untruthful, to flee from the [d]etectives."

B.

We next acknowledge the basic legal principles governing this appeal. The standard of our review of a motion to suppress is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). "[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Ahmad, 246 N.J. 592, 609 (2021) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). We "defer[] to those findings in recognition of the trial court's 'opportunity to hear and see the

witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Nyema, 249 N.J. at 526 (quoting Elders, 192 N.J. at 244). Importantly, "[a] trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Id. at 526–27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Turning to substantive legal principles, "[b]oth the United States and the New Jersey Constitutions protect citizens against unreasonable searches and seizures." State v. Mann, 203 N.J. 328, 337 (2010) (quoting State v. Amelio, 197 N.J. 207, 211 (2008)). As a general proposition, "police officers 'must use the least intrusive means necessary to effectuate the purpose of the investigative detention.'" State v. Chisum, 236 N.J. 530, 547 (2019) (quoting State v. Coles, 218 N.J. 322, 344 (2014)).

Furthermore, police are generally required to obtain a warrant before conducting any type of privacy intrusion constituting a search. A warrantless search is presumed to be unreasonable and therefore invalid. State v. Valencia, 93 N.J. 126, 133 (1983). A warrantless search may be found reasonable only if the State proves by a preponderance of the evidence that the search "falls within one of the well-delineated exceptions to the warrant requirement." Elders, 192 N.J. at 246 (quoting State v. Pineiro, 181 N.J. 13, 19–20 (2004)). Such exceptions to the warrant requirement are "jealously and

carefully drawn." Jones v. United States, 357 U.S. 494, 499 (1958). Each of those exceptions have their own requirements that must be satisfied to justify a warrantless search. The State bears the burden of proving that all material elements of a warrant exception have been satisfied. See State v. Miranda, __ N.J. __, __ (2023) (slip op. at 15) (citing State v. Cushing, 226 N.J. 187, 199 (2016)).

Plain view is one of the recognized exceptions to the warrant requirement. To establish a permissible warrantless search under the plain-view doctrine, the State must prove: (1) "the officer [was] lawfully . . . in the area where he observed and seized the incriminating item or contraband"; and (2) "it must be immediately apparent that the seized item is evidence of a crime." State v. Gonzales, 227 N.J. 77, 101 (2016). However, the plain view exception does not authorize police to cross the threshold of a constitutionally protected place. The plain view doctrine does not apply, for example, when the officer has no right to enter a private residence. State v. Lewis, 116 N.J. 477, 485 (1989); see also State v. Wright, 221 N.J. 456, 478 (2015); State v. Earls, 214 N.J. 564, 592 (2013). Rather, the plain view exception presupposes the officer is already lawfully present within the premises—or vehicle—at the moment the observation is made. Wright, 221 N.J. at 478.

Another exception recognized under New Jersey law is known as the registration search exception. This "very narrow" exception permits a police officer to "conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle" when, during a lawful stop, a motorist "is unwilling or unable to present proof of a vehicle's ownership." Terry, 232 N.J. at 222, 223. "The authority to conduct a warrantless registration search is premised on a driver's lesser expectation of privacy in his vehicle and on the need to ensure highway and public safety." Id. at 238–39 (citing Keaton, 222 N.J. at 448).

Justice Albin, writing for the majority in Terry, acknowledged that "[a]lthough this limited registration search exception is well-ingrained in New Jersey jurisprudence, we have never before discussed the constitutional underpinnings of that doctrine." Id. at 232. He explained the exception is predicated on the principle that a police officer has the lawful right to request that a driver, stopped for a motor vehicle violation, provide proof of ownership. Id. at 222 (citing N.J.S.A. 39:3-29). This is due to the State's "compelling interest in maintaining highway safety by ensuring that only qualified drivers operate motor vehicles and that motor vehicles are in a safe condition." Id. at 233 (quoting State v. Donis, 157 N.J. 44, 51 (1998)). "That compelling state interest extends to ensuring that operators are not in

possession of stolen vehicles." Ibid. The majority opinion notes the registration search exception "is partly rooted in the common-sense notion that the inability or unwillingness to produce a vehicle's registration may raise a 'reasonable suspicion that the vehicle was stolen.'" Ibid. (quoting State v. Holmgren, 282 N.J. Super. 212, 216 (App. Div. 1995)).

Justice Albin further explained that "[t]he justification for the limited registration search doctrine in many ways corresponds with that of the automobile exception to the warrant requirement." Id. at 232. "In the context of an automobile stop, 'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.'" Id. at 231 (quoting Delaware v. Prouse, 440 U.S. 648, 654 (1979)).

The narrow purpose and scope of the registration search exception was also emphasized in Keaton, where the Court unanimously held that the warrantless search was unlawful. 222 N.J. at 442–43. In that case, a state trooper responded to the scene of an overturned motor vehicle. Id. at 443. When he arrived, the driver had already been removed from the vehicle and was being treated by emergency medical technicians (EMTs) for his injuries. Ibid. The trooper did not ask the driver for his "credentials or request permission to enter the vehicle to obtain the registration and insurance

information" because he knew the driver would be taken to the hospital and did not "want to slow the process down." Id. at 443–44. The trooper entered the overturned car to look for the registration certificate and insurance identification card in the glove compartment. While inside the vehicle, he discovered marijuana² on the dashboard and a handgun in a backpack. Id. at 444.

On those facts, the Court held the entry into the overturned vehicle was unlawful because the trooper failed to provide the motorist with an opportunity to present his credentials. Id. at 442–43. The Court carefully considered other actions the trooper could have taken—speak to the motorist, request the EMTs' assistance, or ask the motorist for the credentials at the hospital—before denying the motorist the opportunity to provide the credentials. Id. at 450. The Court confirmed that although alternative actions could cause delay, "[a] defendant's constitutional right to privacy in his vehicle and personal effects cannot be subordinated to mere considerations of convenience to the police short of substantial necessities grounded in public safety." Ibid. (alteration in original) (internal quotation marks omitted) (quoting State v. Jones, 195 N.J. Super. 119, 122 (App. Div. 1984)). While the physical scope of the search must be minimally intrusive and narrowly targeted to the area where a driver

² Possession of marijuana was illegal at that time.

would ordinarily store his or her registration, the Court acknowledged an officer may seize any contraband within his or her plain view. Id. at 448–49.

The majority in Terry "reaffirm[ed the] decision in Keaton." Terry, 232 N.J. at 223. In that case, the rental truck Terry was driving ran a stop sign. He then triggered a dangerous chase as he eluded the police, weaving through traffic before pulling into a gas station.³ Id. at 222–23. The defendant's inexplicable and evasive behavior led the pursuing officer to wonder whether the rented truck was stolen. Id. at 225. The initial pursuing officer and the back-up officer approached the truck with their guns drawn. Id. at 223. When the officers arrived at the driver's door, the defendant repeatedly failed to respond to their order to show them his hands. Id. at 225. After exiting the vehicle, the defendant repeatedly failed to follow instructions to keep his hands out of his pockets. Ibid.

Although the defendant presented his license, he did not respond to three requests to produce the truck's registration and did not indicate who owned the vehicle. Id. at 245. "Instead, he just stood there with a blank stare and, on one occasion, shrugged his shoulders." Ibid. The majority commented, "[w]e

³ We note that from the outset of their face-to-face encounter, the officers in Terry had probable cause to arrest the defendant for eluding, N.J.S.A. 2C:29-2. The encounter in Terry was by no means a routine traffic stop for observed motor vehicle infractions as in the present matter.

cannot say that the officers acted unreasonably by not asking a fourth or fifth time for the papers." Id. at 246. The trial court held that the defendant was given a meaningful opportunity to present the truck's rental papers, and he failed to do so. Ibid. The majority found there was sufficient credible evidence to support that conclusion, concluding that "[f]rom the objectively reasonable viewpoint of the officers, [the] defendant was unwilling or unable to produce proof of ownership." Ibid. Accordingly, the majority held the ensuing search was lawful.

III.

Turning to the matter before us, defendant does not contend Detective Pereira exceeded the physical boundaries of a "pinpointed" registration search by looking in places within the passenger compartment of the vehicle where that document is not normally kept. See id. at 238. Rather, defendant argues the detective had no lawful authority to enter the vehicle at all.⁴

⁴ Detective Pereira testified that he initially opened the driver-side door of the vehicle in part to inspect the ignition switch to see if it was damaged, which would indicate the car was stolen. Entering the vehicle to conduct a criminal investigation without probable cause and compliance with the automobile exception was unlawful. However, it does not appear opening the driver-side door produced any evidence or derivative information that would be subject to the exclusionary rule under the fruit-of-the-poisonous-tree doctrine. See State v. Atwood, 232 N.J. 433, 449 (2018). The record shows Detective Pereira first observed the suspected contraband lying on the passenger-side front floorboard during the search of the glove compartment that occurred later. The outcome

A.

In addressing that contention, we reiterate and stress that exceptions to the warrant requirement are "jealously and carefully drawn." Jones, 357 U.S. at 499. Although motorists have a lesser expectation of privacy in their vehicles as compared to their homes, Terry, 222 N.J. at 238–39, vehicle interiors are still protected against unreasonable intrusion by police. The automobile exception and registration search exception would not be needed, after all, if there were no constitutional limitations on the authority of police to enter a vehicle to search it. Accordingly, as with all warrant exceptions, we must strictly enforce the material elements of the registration search exception.

The majority in Terry could hardly have been more explicit in reaffirming the rule proclaimed in Keaton that "[a] driver must be given an opportunity to present his registration or insurance information, and only if he 'is unable or unwilling' to do so 'may an officer conduct a search for those credentials.'" Id. at 238 (emphasis added) (quoting Keaton, 222 N.J. at 442–43). We glean from the plain language in both Terry and Keaton that affording a detained motorist the opportunity to produce requested credentials is a fundamental and irreducible prerequisite to police entry of a detained vehicle

of this appeal hinges on the lawfulness of the second police entry under the registration search exception.

under the registration search exception. We add it would make little sense to relax a mandatory requirement reaffirmed in Terry—a case where there was probable cause to arrest for the indictable crime of eluding, see supra note 3—when applying the registration search exception to a far more routine motor vehicle stop initiated for traffic violations.

The explicit requirement that the opportunity afforded to a motorist be "meaningful," moreover, confirms the opportunity must be real, not hypothetical or illusory. See id. at 239. The assessment of whether the opportunity was meaningful must be made on a case-by-case basis considering the totality of the relevant circumstances, including when during a motor vehicle stop the request for driving credentials is made, when in the unfolding sequence of events the motorist's opportunity to retrieve them is either afforded or denied, and what alternative options are available to police to obtain the sought-after information.

B.

We next address the State's argument that the meaningful-opportunity element can be excused when, as in this case, the driver is already out of the vehicle before the request for vehicle credentials is made and police decide to prevent reentry for reasons of officer safety.

We emphasize that police are not required to allow lawfully detained drivers to reenter their vehicles before the investigative detention has concluded. That is true whether police had ordered the motorist to step out or, as in this case, the motorist exited the vehicle on his or her own volition. Both situations implicate a bona fide concern for officer safety. The majority in Terry stressed the importance of protecting police officers, reminding us of the stark reality that motor vehicle stops are potentially dangerous. The majority explained:

The officers were entitled to take reasonable, common-sense measures to protect their own lives as they were attempting to determine whether the vehicle was stolen. See Terry v. Ohio, 392 U.S. 1, 23 (1968). The United States Supreme Court has "expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations" and has noted "that a significant percentage of murders of police officers occurs when the officers are making traffic stops." Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977) (quoting United States v. Robinson, 414 U.S. 218, 234 n.5, (1973)). In short, the Constitution commands police officers to act reasonably, not to needlessly place their lives at risk.

[Terry, 232 N.J. at 246.]

Although the circumstances in Terry were considerably more threatening than those presented in this case, we accept that even "routine" traffic stops can pose a danger to officers, and they are permitted to control a detained

motorist's movements throughout the course of an investigative detention. We add it is well established under New Jersey law that police may routinely order a driver⁵ to exit a lawfully detained motor vehicle and need not have a particularized or articulable reason for doing so. Smith, 134 N.J. at 611.

As a matter of common sense, the authority to order a driver to exit includes the corollary authority to prevent the driver from reentering the vehicle until the investigative detention is concluded. Cf. Mimms, 434 U.S. at 110 (reasons of officer safety may justify moving a detained individual from one location to another). Because defendant does not allege the detectives in this case exercised their discretion based on race or any other impermissible consideration—a point we confirmed at oral argument—we refuse to second-guess their decision to secure defendant inside the police vehicle.

However, the decision to prevent defendant from reentering the parked vehicle, while unquestionably lawful, had legal consequences, precluding the use of the narrowly drawn registration search exception. We liken this situation to the strict limitations imposed by our Supreme Court under the automobile exception to the warrant requirement. A search conducted under that exception must be done at the scene of the stop. State v. Witt, 223 N.J.

⁵ We note that under the New Jersey Constitution, the rule is different for passengers. State v. Smith, 134 N.J. 599, 618 (1994).

409, 448–49 (2015). If police decide to tow and impound a vehicle before searching it—including for reasons of public or officer safety—they automatically lose the authority to conduct a warrantless search under the automobile exception. See ibid. ("[W]e limit the automobile exception to on-scene warrantless searches."). As we have noted, the majority in Terry acknowledged that the limited registration search exception corresponds with the automobile exception. Terry, 232 N.J. at 232. The revocation of the authority to conduct a search for the registration certificate when officers prevent a motorist from reentering the detained vehicle for reasons of officer safety corresponds to the revocation of the authority to conduct an automobile exception search when officers tow and impound the subject vehicle for reasons of public and officer safety.

So too, in State v. Robinson, our Supreme Court concluded police lost the authority to conduct a circumscribed protective sweep search of the stopped vehicle's passenger compartment for weapons when their swift and effective actions neutralized any immediate danger posed by the detained occupants. 228 N.J. 529, 548–49 (2017). These precedents demonstrate the authority to conduct a warrantless vehicle entry that would otherwise exist can be revoked as a result of reasonable actions officers take to protect their own safety.

We hold the detectives in this case foreclosed their ability to conduct a registration search by exercising their discretion to deny defendant a meaningful opportunity to retrieve the registration certificate himself. In reaching that conclusion, we note that the majority in Terry did not excuse the officers from complying with the requirement to provide the defendant a meaningful opportunity to produce the registration certificate and insurance identification card. On the contrary, the majority enforced the meaningful-opportunity element and found on the particular facts of that case the officers had satisfied the requirement. Terry, 232 N.J. at 246. We presume the majority would not have explicitly affirmed the trial court's factual finding if the State was excused from proving the defendant had been afforded a meaningful opportunity as a precondition of conducting the registration search.

Finally, with respect to whether the meaningful-opportunity element can be excused for reasons of officer safety, we emphasize that the majority in Terry explicitly stated:

A driver must be given an opportunity to present his registration or insurance information, and only if he "is unable or unwilling" to do so "may an officer conduct a search for those credentials." Keaton, 222 N.J. at 442–43. An incapacitated driver -- for example, one rendered unconscious -- will be "unable to produce proof of registration, [and therefore] the officer may search the car for evidence of ownership." See id. at 448.

[Terry, 232 N.J. at 238 (alteration in original).]

The plain language confirms the only exemption to the meaningful-opportunity requirement arises when a driver is "unable or unwilling" to comply with the police request.

C.

That leads us to consider when and in what circumstances a driver is either unwilling or unable to produce the registration and insurance card within the meaning of the registration search exception. We hold a motorist is unwilling to produce the documents when, as in Terry, he or she refuses to comply with—or willfully ignores—an explicit police request.

What constitutes the inability to produce the documents for purposes of the registration search exception requires a consideration of the underlying reason for the inability. The sole example offered by the majority in Terry—that the person is incapacitated by reason of unconsciousness—suggests that a person's inability must be due to his or her medical condition and not because police decided in the exercise of their discretion to prevent the motorist from complying with their request for the documents. See ibid. Any contrary interpretation of the registration search exception would undermine, if not eviscerate, the protection of privacy rights afforded by the meaningful-

opportunity element by leaving its application to the mercy of unreviewable police discretion.

As we have noted, police do not need to articulate a reason for ordering a driver to exit nor to prevent reentry. Rather, that decision can be made routinely and, putting aside a claim of racial discrimination, is not subject to judicial review. Allowing police to effectively circumvent the meaningful-opportunity element in their sole discretion might unwittingly encourage officers to order drivers to exit their vehicle during routine traffic stops before requesting them to produce driving credentials to enable a warrantless police entry whenever the officer decides not to permit reentry.

Such manipulation clearly did not happen in this case—defendant exited the vehicle on his own volition. But we cannot ignore the risk that were we to relax the limiting principles of the registration search exception, the exception could swallow the rule by allowing police to routinely expose items in a detained vehicle to plain view.

We are also concerned that relaxation of the meaningful-opportunity element could produce unintended adverse consequences. We reiterate defendant does not claim that the detectives in this case acted upon either purposeful discrimination or implicit bias. Cf. State v. Scott, 474 N.J. Super. 388, 399 (App. Div. 2023) (recognizing that "implicit bias is no less real and

no less problematic than intentional bias" (quoting State v. Andujar, 247 N.J. 275, 303 (2021))). But that does not mean we should disregard the possibility of such purposeful or unintentional misuse in the future. Although we focus solely on the objective reasonableness of the detective's conduct and do not undertake any form of subjective "pretext" analysis, we deem it imprudent to interpret the registration search exception in a way that might render it more vulnerable to manipulation or make it harder for reviewing courts to detect and remedy a constitutional violation. Ultimately, the best way to prevent the inappropriate use of the limited registration exception is to strictly construe and scrupulously enforce its elements.

D.

While the police decision in this case to keep defendant from reentering the vehicle foreclosed a warrantless search under the registration search exception, the detectives were by no means deprived of other readily available methods to investigate whether the parked vehicle was stolen. It bears emphasis that in Keaton, the Court carefully considered the alternative options the trooper had to obtain proof of ownership and insurance. 222 N.J. at 450. Applying that same analytical methodology to the present matter, it is clear there were less intrusive options available to obtain the vehicle's registration information that would not have increased the risk to officer safety.

The detectives, for example, might have asked defendant for consent to search the vehicle for the registration,⁶ or, even more simply, might have queried the MVC database to electronically access all the information that is contained in the paper registration certificate. Indeed, Detective Pereira explicitly acknowledged at the suppression hearing that "running plates" is part of a stolen vehicle investigation. The record does not indicate whether he ever ran an MVC database query.

The ability for police to run a computer lookup is an important consideration in assessing the reasonableness of a physical search for a registration certificate. It is well accepted that the protections against unreasonable searches and seizures under our State Constitution evolve in response to changing technology. See Earls, 214 N.J. at 587 (noting the constitutional search and seizure question before the Court "is informed by changes in technology"). Both the majority and dissenting opinions in Terry specifically acknowledged the impact of technology that allows police officers to readily conduct MVC database lookups on the vehicles and drivers they

⁶ We note that while he was confined in the rear of the police car, defendant told Detective Pereira where in the parked vehicle his sister kept the registration and insurance identification card. The State does not contend on appeal that in doing so, defendant explicitly or impliedly consented to the detective entering the vehicle to retrieve those documents.

encounter.⁷ In recognition of that technology, the majority announced a new limiting principle to the registration search exception: "When a police officer can readily determine that the driver or passenger is the lawful possessor of the vehicle -- despite an inability to produce the registration -- a warrantless search for proof of ownership will not be justified." Terry, 232 N.J. at 223.

In this instance, the State failed to provide any reason for why the detectives could not have used the less intrusive means of an MVC lookup to acquire the information contained in the registration certificate. The State is

⁷ In response to a question posed at oral argument in this case, the State presented a letter explaining that a police query of the MVC database does not provide information regarding a vehicle's insurance coverage. Unlike a vehicle registration certificate, an insurance card is not a government-issued document but rather one issued by a private insurance company. See N.J.S.A. 39:3-29.1 (requiring promulgation of rules and regulations concerning the issuance, design, and content of insurance identification cards); N.J.A.C. 11:3-6.1 to -6.5 (enumerating specifications for both physical and electronic insurance identification cards). A paper copy, moreover, does not conclusively establish that the vehicle is insured at the time of the stop. A policy in force when the card was issued could have been cancelled, for example, for failure to pay periodic premiums.

We are aware of no precedent in New Jersey or any other jurisdiction that authorizes a warrantless search to look solely for an insurance identification card. Rather, in the reported cases where an insurance identification card is mentioned, including Terry, the challenged police conduct also involved a search for the vehicle registration certificate. We have no occasion in this case to decide whether the registration search exception should be expanded to authorize a search solely for an insurance identification card when police already have registration-related information needed to determine whether the detained vehicle may be stolen.

hard pressed to meet its burden to prove the police conduct was reasonable without explaining why an MVC database query would not have been an efficient and safe method to acquire information concerning who owned the vehicle—in this case defendant's sister—and whether defendant lawfully possessed it.⁸

E.

Even putting aside any requirement to exhaust the MVC lookup option, we conclude the State has failed to establish the search was lawfully conducted under the limited registration search exception. The motion judge found that "the [d]efendant here was given an opportunity to present his credentials to the [d]etectives and was unable to do so." Although we are hesitant to second guess a motion court's fact-sensitive finding, see Terry, 222 N.J. at 246, we conclude that finding is not supported by sufficient credible evidence in the record, see Ahmad, 246 N.J. at 609.

Detective Pereira—the sole witness at the suppression hearing—candidly admitted that he was "not going to give [defendant] that opportunity to even go to the vehicle." The detective explicitly acknowledged that defendant never

⁸ Accessing registration information electronically at the outset of the investigative detention would have allowed the detectives to ask defendant, for example, to provide his sister's name and address, which would have helped to confirm or dispel his claim that the registered owner was indeed his sister.

expressed an unwillingness to provide the registration and insurance identification card and was only unable to do so because he was detained in the police car. As Detective Pereira unequivocally explained, "[p]hysically [defendant] could have gone and [gotten] [the vehicle credentials] himself; however, I made the determination that I'll go find the paperwork myself." Nothing in the record contradicts the detective's explicit acknowledgment he did not afford defendant an opportunity to produce the requested documents on his own.

We therefore conclude the State has failed to prove by a preponderance of the evidence that defendant was ever afforded a meaningful opportunity to produce the paper documents kept in the vehicle. Because we reject the State's argument the detectives were not required to afford defendant a meaningful opportunity to retrieve the documents on his own, we hold the State failed to carry its burden of establishing that the police entry into the vehicle was authorized under the registration search exception. Since the detective was thus not lawfully inside the vehicle when he first saw the suspected contraband, the plain view exception does not apply and the CDS found inside the vehicle must be suppressed.

IV.

Our fact-sensitive determination that the State failed to afford defendant a meaningful opportunity to produce the registration certificate does not conclude our analysis. We must also address the recent revisions to N.J.S.A. 39:3-29—the statute that is the cornerstone of the registration search exception. New technologies allow citizens to store, access, and share information electronically on their mobile devices, obviating the need for tech-savvy persons to use cash, traditional plastic credit cards, and paper or plastic identification, health insurance, and COVID-19 vaccination cards, among other personal records. Importantly for purposes of this appeal, legislation that took effect on November 8, 2021 provides that the driver or operator of a motor vehicle need not present the actual registration certificate or insurance identification card but can instead show an officer an electronic image of it. L. 2021, c. 258 § 4 (eff. Nov. 8, 2021). That interim measure provided the MVC time to put in place a system to issue registration certificates to vehicle owners in a digital form. Effective as of May 1, 2023, motorists may exhibit to police the registration in an electronic form on a cellular phone, tablet, or computer. L. 2021, c. 258 §§ 2 to 3 (eff. May 1, 2023). We anticipate that over time, many motor vehicle owners will avail themselves of the digital option.

The limited registration search exception described in Keaton and Terry contemplates a search for a physical piece of paper normally kept in a glove compartment or center console, or on a sun visor, not a search for an electronic file stored in a cellphone.⁹ The transition to a paperless system suggests the justification for any such warrantless registration search would all but evaporate unless there is a particularized basis upon which to believe the current registration certificate for the detained vehicle exists in paper, rather than electronic, form. It seems pointless, after all, to conduct a physical search for a paper document that does not exist, that need not be kept in the vehicle even if it had been issued by MVC, and that will become increasingly unlikely to be found in any of the specific places within a vehicle where a registration search has heretofore been allowed.

To account for the revised statutory framework, we hold police may not search for a paper registration certificate without a particularized reason to believe that such a document is kept in the vehicle. The particularized basis

⁹ The revised statute expressly provides that, "[t]he use of a cellular telephone, tablet, computer, or any other electronic device to display proof of registration or insurance does not constitute consent for a police officer or judge to access any other contents of the device." N.J.S.A. 39:3-29. The law is well-settled that absent exigent circumstances, police may not conduct a search of the stored contents of a cellphone without first obtaining a communications data warrant or the owner's knowing and voluntary consent. See Riley v. California, 573 U.S. 373 (2014) (police may not search contents of seized cellphone under the search-incident-to-arrest exception).

can be established simply by asking the detained motorist as to the method by which the registration certificate is kept. Accordingly, we hold that henceforth, before entering a vehicle to conduct a physical search for a paper form of the registration certificate, an officer must first ask the detained driver—or passenger when there is reason to believe the passenger owns the vehicle—if the registration information is stored in paper form.¹⁰ Of course, police need not fulfill this new prerequisite if the motorist is unconscious or otherwise incapacitated. See Terry, 232 N.J. at 238. We emphasize, moreover, that police always have the alternative option to directly access the electronic information that is digitally stored in the MVC database, in which event there would be no need to conduct a physical search of the vehicle since the officer would have already acquired the registration-related information through the MVC lookup.

¹⁰ Nothing in this portion of our opinion alters our holding that police may not initiate a search under the registration search exception—whether for a paper or electronic registration certificate—without providing the motorist a meaningful opportunity to produce or exhibit the certificate. Nor does this portion of our opinion alter our holding that a motorist is not deemed to be unable to produce the certificate for purposes of this limited warrant exception when the only reason for such inability is a police officer's discretionary decision to prevent reentry. These fundamental principles will, of course, also limit police authority under the exception to enter a vehicle to search for or retrieve a cellphone in cases where the registration certificate is kept in electronic form.

The new prerequisite for conducting a registration search that we announce today applies only prospectively. See Earls, 214 N.J. at 590 (noting that an appellate court has the option to apply a new rule "purely prospectively . . . to cases in which the operative facts arise after the new rule has been announced" (quoting State v. Henderson, 208 N.J. 208, 301 (2011))). Furthermore, mindful of both the limits of our authority as an intermediate appellate court and the possibility the revisions to N.J.S.A. 39:3-29 will undermine the viability of the registration search exception—a question that can only be decided by our Supreme Court—we stay implementation of this portion of our opinion for forty-five days to permit an appeal by the State and to allow law enforcement officials an opportunity to alert patrol officers to the new precondition we impose.

V.

Because we reverse the denial of defendant's motion to suppress and vacate his convictions, we need not address his sentencing contentions.

The denial of defendant's suppression motion is reversed, and his convictions are vacated. We remand for proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION