

**NOT FOR PUBLICATION WITHOUT THE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-3234-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRANDON D. WILLIAMS,
a/k/a BRANDON WILLIAMS,

Defendant-Appellant.

Argued June 4, 2024 – Decided June 28, 2024

Before Judges Sumners and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 21-06-1587.

Zachary G. Markarian, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Zachary G. Markarian, of counsel and on the briefs).

Jason Magid, Assistant Prosecutor, argued the cause for respondent (Grace C. MacAulay, Camden County Prosecutor, attorney; Jason Magid, of counsel and on the brief).

PER CURIAM

Defendant Brandon D. Williams' motion to suppress evidence obtained during a consensual search of his car was denied by the motion court. Defendant subsequently pled guilty to unlawful possession of a handgun. After reviewing the record, we conclude that, despite having probable cause to stop defendant's car due to motor vehicle violations, the police did not have reasonable articulable suspicion that defendant committed a crime to justify a request to search his vehicle under State v. Carty, 170 N.J. 632 (2002). We therefore reverse the denial of defendant's suppression motion, vacate his conviction and sentence, and remand for further proceedings consistent with this opinion.

I.

Camden County Police Detective Nicholas Palermo was the only witness to testify at the suppression hearing. He stated that on April 30, 2021, he was driving an unmarked police vehicle when he saw a black Chevrolet Malibu, driven by a man later identified as defendant, make several illegal turns without signaling as it circled a block in East Camden "at a high rate of speed." He then saw the Malibu park outside a grocery store, where another car pulled up next to it. The other car's driver, an unidentified man, left his car stepping into the

Malibu with defendant, where they talked. Five minutes later, the man got out of the Malibu and returned to his car. Both cars then drove away.

Palermo admitted he did not see the men exchange anything because he could not see inside the Malibu or hear what they were saying. He also admitted not knowing defendant or the other man. In questioning Palermo, the court asked him whether he had "any conversations [with defendant] about the gentlemen — the guy with the green sedan with the fanny[]pack," evidently referring to the other car's driver. Palermo answered: "No."

Palermo, experienced in narcotics cases and consent searches, testified the neighborhood where he initially observed defendant was "a high crime, high drug area." He revealed "approximately three" shootings had occurred in the area the week before, though the police had not arrested any suspects in the area. Palermo followed the Malibu to North Camden, observing it "traveling at a high rate of speed, continuing . . . [to make] illegal turns." After the Malibu made another illegal turn, Palermo radioed for marked police units "to conduct a motor vehicle stop." Palermo testified defendant did not immediately pull over when the police signaled for him to do so. He added:

[W]hen the marked patrol units arrived in the area and began to conduct a motor vehicle stop, I observed the driver [of the Malibu] motioning and messing with the

center console area of the vehicle while attempting to be stopped.

. . . .

. . . the vehicle failed to pull over initially and approximately [fifteen] seconds of the driver messing with the center console area of the vehicle, it pulled over to the side of the street.

At least five police officers participated in the stop. One officer wore a body camera, which recorded the stop and subsequent questioning.

Defendant was driving without a driver's license—he provided another form of identification—and vehicle registration. The Malibu was a rental under someone else's name. Defendant complied with a request to step out of the car. He then stated he was unsure why he had been pulled over by "so many police" and that the police were "scaring [him]."

Defendant refused to reveal¹ who rented the Malibu, stating "everything I got is legal." Palermo then asked defendant about his activities in East Camden, explaining he had seen him "circle around the block . . . quite a few times" and that the police had stopped him for traffic violations, including not using turn signals at least three times. During this exchange, defendant told Palermo, "I

¹ The suppression hearing transcript indicates this portion of the body camera footage was inaudible.

ain't saying nothing now because I don't know what you're . . . doing. I don't know what your angle is." He stated, "y'all didn't see me get out of no car. Y'all didn't see me get no money from nobody. Y'all didn't even see me talk to nobody. I'm riding around in the car talking on the phone."

Defendant subsequently consented to a request to search the car by signing a consent to search form. The police found two handguns, an extended magazine, and 138 bags of "white rock-like" drugs under the car's gearshift. Defendant was arrested.

Following Palermo's testimony and counsel's arguments, the court issued an oral decision denying defendant's motion to suppress. The court determined the police had reasonable suspicion to stop defendant's car and seek his consent to search it based on Palermo's credible observation of defendant's meeting with an unidentified man outside the grocery store. Based on defendant's driving, the court inferred he was "surveilling the area himself . . . trying to find somewhere to meet somebody," which he eventually did outside the grocery store. The court further found defendant met with a man "with a fanny[]pack" who entered the Malibu before stepping back out five minutes later without the fanny pack. The court determined this meeting gave rise to reasonable suspicion "that something had occurred" even if the police did not see what happened

inside the Malibu. It reasoned the police did not see more because defendant was "savvy enough to know that there [were] officers in that area" and "[found] a place where that transaction could occur" unobserved. The court added defendant "continue[d] his grossly erratic driving" after leaving the store, which gave police additional reason to stop him "for the safety of the public." Finally, the court determined defendant consented to the search knowingly and voluntarily, as evidenced by his signing the consent to search form free from any duress and in the presence of multiple officers. An order was entered memorializing the denial of defendant's suppression motion.

Three weeks later, defendant pled guilty to an amended second-degree unlawful possession of a weapon count. As part of the negotiated plea, he waived his right to appeal,² while the State agreed to dismiss the remaining charges³ and recommend a five-year prison sentence with forty-two months of

² The waiver of appeal does not prohibit defendant from appealing. State v. Gibson, 68 N.J. 499, 513 (1975). But the State may annul the plea agreement and reinstate the original charges "no later than seven days prior to the date scheduled for oral argument" for his appeal. R. 3:9-3(d). The State did not timely move to annul defendant's plea, and its merit's brief does not address this issue.

³ The other dismissed charges were: third-degree possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)(1); third-degree possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 2C:35-5(a)(1)

parole ineligibility and forfeiture of the seized items. The trial court sentenced defendant pursuant to these terms.

Defendant appeals his conviction arguing in a single point⁴:

POLICE LACKED REASONABLE SUSPICION TO SEEK CONSENT TO SEARCH WILLIAMS'S CAR. THE MOTION COURT ERRED IN FINDING THE REQUEST JUSTIFIED BASED ON INFORMATION NOT IN THE RECORD AT THE SUPPRESSION HEARING.

II.

Our review of a motion to suppress is deferential. State v. Nyema, 249 N.J. 509, 526 (2022). We "must uphold the factual findings underlying the [motion] 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) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). When the court hears testimony in addition to reviewing an audio/video recording of the encounter,

and -5(b)(3); second-degree possession of a weapon during a controlled dangerous substance offense, N.J.S.A. 2C:39-4.1(a); fourth-degree possession of a defaced firearm, N.J.S.A. 2C:39-3(d); fourth-degree possession of a large capacity ammunition magazine, N.J.S.A. 2C:39-3(j); and second-degree possession of a weapon by a convicted person, N.J.S.A. 2C:39-7(b)(1).

⁴ Defendant's criminal case information statement also claimed he received an excessive sentence. (See ACME). Because he has not briefed this issue on appeal, it is deemed waived. State v. Dorff, 468 N.J. Super. 633, 639 n.3 (App. Div. 2021).

the court's findings based on video evidence can only be reversed on appeal if the court's interpretation of the video evidence was "so wide of the mark[] that the interests of justice demand intervention." State v. S.S., 229 N.J. 360, 381 (2017); see also Elders, 192 N.J. at 245. Importantly, "[a] . . . court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Nyema, 249 N.J. at 526-27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

Under our state constitutional guardrails, police cannot randomly seek consent to search a motor vehicle. The circumstances under which police may request a search is spelled out in Carty, where our high court created a new rule, stating,

consent searches following a lawful stop of a motor vehicle should not be deemed valid . . . unless there is reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity. In other words, . . . unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop to continue the detention after completion of the valid traffic stop, any further detention to effectuate a consent search is unconstitutional.

[170 N.J. at 647.]

The rule's purpose is "prophylactic . . . [to] protect[] the public from the unjustified extension of motor vehicle stops and from fishing expeditions

unrelated to the reason for the initial stop." State v. Shaw, 237 N.J. 588, 619 (2019) (citing Carty, 170 N.J. at 647).

Reasonable suspicion is defined as "a particularized and objective basis for suspecting [a] person stopped of criminal activity." State v. Pineiro, 181 N.J. 13, 22 (2004) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). There must be "some objective manifestation that the person [detained] is, or is about to be engaged in criminal activity." Ibid. (alteration in original) (quoting United States v. Cortez, 449 U.S. 411, 417-18 (1981)). Our Supreme Court has reaffirmed that "[a]lthough reasonable suspicion is a less demanding standard than probable cause, '[n]either "inarticulate hunches" nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights.'" State v. Goldsmith, 251 N.J. 384, 399 (2022) (quoting Stovall, 170 N.J. at 372 (Coleman, J., concurring in part and dissenting in part)).

When determining whether reasonable suspicion exists, a reviewing court must consider "the totality of the circumstances—the whole picture." State v. Nelson, 237 N.J. 540, 554 (2019) (quoting Stovall, 170 N.J. at 361). A reviewing court "must not engage in a 'divide-and-conquer' analysis by looking at each fact in isolation." Id. at 555 (citation omitted). The reasonable suspicion inquiry, moreover, must account for the officers' background and training that

permits them "to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" Ibid. (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)).

III.

Applying the noted principles, we conclude that, despite having probable cause to stop defendant's car because of the numerous motor vehicle violations, the police had no legal basis to solicit defendant's request to search his car because there was no reasonable articulable suspicion to believe he was involved in criminal activity.

In addressing the lawfulness of the consent search, the motion court held defendant was involved in criminal activity based on Palermo's creditable observation of defendant's meeting with an unidentified man outside the grocery store before circling the block and "messing" with the car's center console moments after Palermo signaled to pull over. The court determined the man entered defendant's car wearing a fanny pack but left the car without it. However, as defendant correctly points out and the State concedes, the court had no factual basis to find the man had a fanny pack because there was no such testimony. Palermo never mentioned on direct or cross examination that the

man wore a fanny pack. In fact, when questioned by the court, he acknowledged he never asked defendant about a fanny pack. Thus, we cannot consider this unsupported allegation. See R. 1:7-4(a) (requiring the trial court to "find the facts and state its conclusions of law" in its decision).

Although we defer to the factual findings made by the motion court, looking at totality of the circumstances surrounding the stop of defendant's car, the police did not have a reasonable articulable suspicion to justify the consent search request. The State asserts the request was permissible because of defendant's: (1) erratic driving of a car rented under someone else's name without a valid driving license; (2) meeting outside a grocery store after deliberately circling the area to find an un surveilled spot; and (3) nervousness and actions after the police stopped him, including his fidgeting about the center console, unsolicited statement that the police did not see him engage in any drug-related transaction, and contradictory answer to Palermo's question asking why he was in East Camden.

We acknowledge Palermo's testimony that the neighborhood where he spotted defendant was "a high crime, high drug area" can be relevant to the totality of circumstances analysis. See Pineiro, 181 N.J. at 26 ("[T]he reputation or history of an area and an officer's experience with and knowledge of the

suspected transfer of narcotics [are] relevant factors to determine the validity of a Terry^[5] stop."). Yet, "[t]he State must do more than simply invoke the buzz words 'high-crime area' in a conclusory manner to justify investigative stops." Goldsmith, 251 N.J. at 404. We agree with defendant that the court improperly relied on the generalized testimony about the neighborhood being a "high-crime" area, as Palermo did not provide any "timeline or context" for the shootings he referenced and could not articulate a link between defendant or the other man to the shootings. See ibid. Nor did Palermo observe any activity indicating that defendant was involved in a drug transaction. We consider what Palermo saw or heard prior to the search request, not what the search revealed.

We likewise agree with defendant that the court improperly relied on Palermo's testimony that defendant took fifteen seconds to pull over and appeared nervous and "mess[ed] with the center console" after he was pulled over, because "[n]ervousness and excited movements are common responses to unanticipated encounters with police officers on the road" and thus not necessarily indicative of criminal activity. State v. Rosario, 229 N.J. 263, 277 (2017). There was nothing the police learned after defendant was stopped which bolstered the limited information they knew before the stop. Despite Palermo's

⁵ Terry v. Ohio, 392 U.S. 1 (1968).

experience, he presented no particularized and objective basis for suspecting that defendant was engaged in criminal activity. See Pineiro, 181 N.J. at 22. Notably, the motion court did not explain the nexus between defendant's demeanor, lack of driving credentials, and the likelihood that contraband or other evidence was concealed in his car. We stress that defendant was not obliged to cooperate with the police investigation other than to produce his driving credentials—although he had none. The lack of documents did not warrant a request to search defendant's car. See Byrd v. United States, 584 U.S. 395, 408 (2018) (acknowledging "there may be countless innocuous reasons why an unauthorized driver might get behind the wheel of a rental car and drive it").

The State's claim that defendant's statement regarding where he had been driving did not match Palermo's surveillance of defendant, fails to explain how defendant's remarks were inconsistent with Palermo's observations. Palermo testified, "[a]ll [defendant] admitted to was he was in the area of Marlton Pike, more towards Pennsauken. He was not in that area." Defendant told Palermo, "[h]e was visiting his mom in Pennsauken." However, it is unclear from Palermo's testimony whether defendant was stating his whereabouts before or after Palermo first saw him driving around the block before entering the grocery

store parking lot. We thus cannot conclude defendant lied about where he had been which warrants a reasonable articulable belief he was engaged in criminal conduct. Yet, even if we agree with the State that defendant lied, there were no other reasonable articulable facts indicating defendant violated the law to warrant a request to search his car.

Significantly, Palermo admittedly did not observe any interactions between defendant and the unidentified man establishing a reasonable articulable basis that they engaged in criminal activity. And moreover, Palermo had no idea whether either of them had a criminal history to cause him to reasonably believe they engaged in illegal activity. Cf. State v. Valentine, 134 N.J. 536, 547 (1994) ("[A]n officer's knowledge of a suspect's prior criminal activity in combination with other factors may lead to a reasonable suspicion that the suspect is armed and dangerous."). Palermo did not have the benefit of any reliable information that two men driving specific cars would meet at the grocery store to engage in a criminal transaction. The fact that five police officers responded to Palermo's call for assistance to stop defendant's car suggests Palermo suspected defendant committed a crime at the grocery store parking lot. Yet, as noted there was no reasonable articulable facts supporting this conclusion.

Because we conclude the police lacked reasonable suspicion to seek defendant's consent to a search, we need not address whether defendant knowingly and voluntarily consented because any consent he gave was automatically void. See State v. Rodriguez, 172 N.J. 117, 133 (2002).

We reverse the denial of defendant's suppression motion and vacate defendant's conviction. We remand for further 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