NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1243-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAHAAD I. JONES,

Defendant-Appellant.

APPROVED FOR PUBLICATION
May 26, 2023
APPELLATE DIVISION

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Submitted April 26, 2023 – Decided May 26, 2023

Before Judges Accurso, Vernoia and Firko.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Indictment Nos. 22-07-1704 and 22-07-1705.

Joseph E. Krakora, Public Defender, attorney for appellant (Stefan Van Jura, Assistant Deputy Public Defender, of counsel and on the brief).

Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney for respondent (Matthew E. Hanley, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

The opinion of the court was delivered by

VERNOIA, J.A.D.

By leave granted, defendant Shahaad I. Jones appeals from an order denying his motion to suppress evidence — a handgun and large capacity magazine — the State contends was seized after a police officer observed the handle of the gun in plain view by looking through the windshield of a parked car in which defendant slept. Defendant offers a different version of the circumstances leading to the seizure of the evidence and argues the court erred by denying the suppression motion without conducting an evidentiary hearing. We reverse and remand for further proceedings.

I.

A grand jury charged defendant in two indictments with offenses arising from a single incident occurring on May 20, 2022. In the first, defendant is charged with second-degree unlawful possession of a handgun and fourth-degree possession of a large capacity ammunition magazine. In the second, defendant is charged with second-degree certain persons not to possess a weapon, the handgun that is the subject of the unlawful possession charge in the first indictment.

Defendant moved to suppress the handgun and magazine. In support of the warrantless search that resulted in the seizure of the evidence, the State relied on a Newark Police Department incident report stating that at 5:45 a.m. on May 20, 2022, Officers Nicholas Russell and Ian Marsh were dispatched to

investigate a suspicious vehicle. The officers observed a male, later identified as defendant, asleep in the vehicle's driver's seat and a female asleep in the front passenger seat. A "dark tinted film" covered the windows on the driver's and passenger's sides of the vehicle.

According to the incident report, Officer Russell walked to the front of the vehicle to obtain a better view of its occupants. Officer Russell reported seeing "the handle of a gun sticking out of" defendant's "right front pocket . . . as he slept in the driver seat . . . ." The officers drew their weapons and gave verbal commands to defendant and the vehicle's other occupant. Defendant raised his hands, and the officers retrieved the gun, which contained "fourteen full metal jacket rounds with on[e] round in the chamber[,]" from defendant's front pocket.

Defendant challenged the State's version of the events. In a brief filed in response to the State's submissions to the court, defendant asserted the dark tint on the front and rear side windows of the vehicle prevented the officers from observing either of its two occupants even with the aid of their flashlights. Defendant further asserted Officer Russell walked to the front of the vehicle but could not see inside of it.

Defendant additionally asserted the officers then walked to the front passenger side window, ordered the passenger to lower the window, and, when

the passenger opened the window, the officers were then first able to see inside the vehicle. Defendant asserted the gun was not visible from the officers' vantage point at that time.

Defendant also asserted Officer Russell then walked to the driver's side, opened the door, ordered defendant out of the vehicle, and handcuffed him. Defendant claimed Officer Russell then searched his person and recovered the gun. Defendant claimed recorded footage from Officer Marsh's body worn camera (BWC) showed he could not see through the vehicle's side windows, even with use of a flashlight, and he could not clearly see the inside of the vehicle through its windshield. Counsel for defendant also reported to the motion court that although Officer Russell wore a BWC during the incident, the State had advised the BWC recording could not be located.

In support of his suppression motion, defendant argued he was entitled to an evidentiary hearing because there were disputed facts concerning the manner in which the search and seizure occurred. Defendant also claimed that, in accordance with N.J.S.A. 40A:14-118.5(q), he was entitled to a rebuttable presumption the missing footage from Officer Russell's BWC would have been exculpatory. The State argued an evidentiary hearing was unnecessary and N.J.S.A. 40A:14-118.5(q)'s rebuttable presumption is inapplicable at suppression hearings.

In its written decision and order, the court first noted the parties' different versions of the facts and explained the State relied on the plain view exception to the warrant requirement as justification for the warrantless search that resulted in the seizure of the handgun and magazine. The court also concluded the only material facts pertinent to its determination of the legality of the search were those concerning whether Officer Russell "had seen [d]efendant's handgun inside the vehicle before the officers ordered [d]efendant out of the vehicle."

The court determined an evidentiary hearing was not required because defendant's version of the events constituted "a bald denial of the truth of the State's facts." The court found that, if it granted an evidentiary hearing, "[d]efendant would merely assert that the officers could not see inside [the] vehicle while the officers would assert that they could." Moreover, the court reviewed the recording from Officer Marsh's BWC and made factual findings concerning the officers' investigation of the vehicle and what Officer Russell's BWC footage would have shown. The court further "accept[ed] the State's contention that Officer Russell saw the handgun in [d]efendant's pocket through the front windshield of his vehicle for the purposes of the" suppression motion and determined the search was lawful because Officer Russell observed the gun in plain view prior to ordering defendant out of the vehicle.

The court also rejected defendant's claim he is entitled to a rebuttable presumption under N.J.S.A. 40A:14-118.5(q) that the recording from Officer Russell's BWC, which was either not captured or was destroyed, included exculpatory evidence. The court opined the rebuttable presumption found in the statute applies only at trial and therefore was unavailable to defendant in support of his suppression motion.

The court entered an order denying the suppression motion, and, as noted, we granted defendant's motion for leave to appeal.

II.

Defendant offers the following arguments for our consideration:

> POINT I
>
> THE STATUTORY REBUTTABLE PRESUMPTION THAT EXCULPATORY EVIDENCE WAS DESTROYED OR NOT CAPTURED WHEN THE [BWC] OF A POLICE OFFICER IS NOT PROPERLY EMPLOYED APPLIES WITH EQUAL FORCE TO PRE-TRIAL PROCEEDINGS AND TRIAL.
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> POINT II
>
> THE TRIAL COURT ERRED IN DENYING AN EVIDENTIARY HEARING ON THE MOTION TO SUPPRESS BECAUSE THERE WERE MATERIAL FACTS IN DISPUTE.

A.

Under "the Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of our State Constitution, searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Elders, 192 N.J. 224, 246 (2007). "Because . . . searches and seizures without warrants are presumptively unreasonable, the State bears the burden of demonstrating by a preponderance of the evidence that an exception to the warrant requirement applies." State v. Manning, 240 N.J. 308, 329 (2020).

Under our Rules of Court, a defendant in a criminal case claiming evidence was seized unlawfully as the result of a warrantless search may seek suppression of the evidence by filing a notice of motion. R. 3:5-7(b). "[T]he movant . . . is not required to file the first brief []or to carry the burden of proof" because "the burden is upon the State to justify a warrantless search." State v. Torres, 154 N.J. Super. 169, 172 (App. Div. 1977).

"On a defendant's motion to suppress evidence seized in a warrantless search, the State must set forth its factual allegations in its brief." State v. Carrillo, 469 N.J. Super. 318, 332 (App. Div. 2021) (citing R. 3:5-7(b)). In response, a defendant is required to file "a brief and [counterstatement] of facts . . . ." R. 3:5-7(b); see also Torres, 154 N.J. Super. at 173 (explaining

Rule 3:5-7(b)'s "clear and unambiguous" language does not require a defendant to file an affidavit supporting his counterstatement of facts on a motion to suppress evidence seized during a warrantless search).

Rule 3:5-7(c) requires a testimonial hearing "[i]f material facts are disputed[.]" To establish a dispute as to material facts, "a defendant must do more than allege baldly that the search warrant was unlawful." Carrillo, 469 N.J. Super. at 332. "[F]actual allegations which are general and conclusory or based on suspicion and conjecture [do] not suffice" to establish a dispute of material facts warranting a testimonial hearing. State v. Hewins, 166 N.J. Super. 210, 215 (Law Div. 1979) (quoting Cohen v. United States, 378 F.2d 751, 760 (9th Cir. 1967)), aff'd, 178 N.J. Super. 360 (App. Div. 1981).

We do not accord deference to a court's determination there is no need for an evidentiary hearing on a motion to suppress based on a determination, made after a review of the parties' briefs, that there are no "material facts" in dispute. Carrillo, 469 N.J. Super. at 333. "Determining . . . if facts are in dispute is a matter of law" that may be made by "examin[ing] side-by-side the parties' allegations." Ibid. The determination of whether facts are material also presents an issue of law we review de novo. Ibid.

Measured against these principles, we are persuaded the conflicting statements of fact presented by the State and defendant establish disputes of

material fact warranting a testimonial hearing. The State claimed the search was justified under the plain view exception to the warrant requirement. Thus, the court correctly found defendant's motion turned on whether Officer Russell actually observed the handle of the handgun in defendant's pocket in plain view from his vantage point in the front of the vehicle.

To justify a search under the plain view exception to the warrant requirement, the State must prove: the officer was lawfully "in the area he observed and seized the incriminating item or contraband"; and it was "immediately apparent that the item seized is evidence of a crime." State v. Gonzales, 227 N.J. 77, 101 (2016). Thus, application of the plain view exception requires evidence an officer actually observed the incriminating item or contraband at the time the officer was in a lawful place.

Here, defendant's statement of facts challenged the State's claims the officers could see into the car through the side windows in the first instance due to the dark tint on the windows. Additionally, defendant asserts Officer Russell could not actually see the handle of the gun through the windshield from the front of the vehicle. Defendant further asserts that when he rolled down the driver's side front window of the vehicle, the handgun was not within Officer Russell's view, and it was not until he was removed from the vehicle, handcuffed, and searched that Officer Russell discovered the gun. Defendant

further claimed the recorded footage from Officer Marsh's BWC demonstrated Officer Russell could not have observed the handgun from the front of the vehicle as claimed by the State.

Those asserted facts plainly and particularly dispute the State's claim Officer Russell observed the handle of the handgun as he lawfully stood in front of the vehicle. And if Officer Russell could not see the handgun at that time, the gun was not in plain view. Resolution of that dispute over those material facts required, and requires, a testimonial hearing. Carrillo, 469 N.J. Super. at 332.

We reject the State's claim, and the motion court's conclusion, that defendant's assertions of fact constitute bald assertions that do not warrant a hearing. See, e.g., Hewins, 166 N.J. Super. at 214 (finding a defendant's "contention" a warrantless search is "presumptively illegal" did not place material facts in dispute under Rule 3:5-7(b)). The motion court relied on our decision in State v. Green, 346 N.J. Super. 87 (App. Div. 2001), to support its conclusion defendant's factual claims constitute bald assertions that did not establish a dispute as to material facts under Rule 3:5-7(b). In Green, however, we determined the defendant's assertions of fact did not warrant an evidentiary hearing because the challenged search was lawful even if the

"defendant's version of the circumstances" was accepted. 346 N.J. Super. at 101.

There are no similar circumstances present here. Rather, if defendant's assertions of fact are true, and his claims concerning Officer Marsh's BWC recording prove accurate, the court may be compelled to conclude Officer Russell did not see the handgun in plain view. Those circumstances warrant an evidentiary hearing under Rule 3:5-7(b). Carrillo, 469 N.J. Super. at 332.

In determining whether an evidentiary hearing was required, the court also erred by concluding N.J.S.A. 40A:14-118.5(q) is inapplicable to issues presented at a suppression hearing. That is because if the statute applies, an additional factual dispute would be presented as to the credibility of Officer Russell's account of what occurred in the event the court finds defendant "reasonably asserts that exculpatory evidence was destroyed or not captured," thereby entitling defendant to a rebuttable presumption the officer's BWC recording includes exculpatory evidence. N.J.S.A. 40A:14-118.5(q)(2).

In pertinent part, the statute provides that,

> [i]f a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this act, or intentionally interferes with a [BWC]'s ability to accurately capture audio or video recordings:
>
> . . .

> (2) there shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; []
>
> . . . .
>
> [N.J.S.A. 40A:14-118.5(q).]

The motion court offered no analysis supporting its determination the rebuttable presumption required under the statute does not apply in a proceeding on a motion to suppress evidence. We find no basis in the statute's plain language supporting the court's determination.

"Questions related to statutory interpretations are legal ones" that we review de novo. State v. S.B., 230 N.J. 62, 67 (2017). "The goal of 'statutory interpretation is to "determine and give effect to the Legislature's intent."'" State v. A.M., 252 N.J. 432, 450 (2023) (quoting State v. Lopez-Carrera, 245 N.J. 596, 612 (2021)). "[T]he best indicator of that intent is the plain language chosen by the Legislature." State v. Frye, 217 N.J. 566, 575 (2014) (quoting State v. Gandhi, 201 N.J. 161, 176 (2010)). We do not interpret a statute's words "in isolation; we instead consider 'them in context with related provisions so as to give sense to the legislation as a whole.'" Lopez-Carrera, 245 N.J. at 613 (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If the plain language" of a statute "leads to a clear and unambiguous result, then

the interpretative process should end, without resort to extrinsic sources." State v. D.A., 191 N.J. 158, 164 (2007). Stated differently, "[w]hen the text of a statute is clear, the court's job is over." A.M., 252 N.J. at 451.

We find nothing in the statute's plain language supporting the court's determination the rebuttable presumption set forth in N.J.S.A. 40A:14-118.5(q) is limited to trials or is inapplicable to suppression hearings. The statute is devoid of any language imposing such a limitation, and it is not our "job to engraft requirements" on a statute "that the Legislature did not include. [Rather,] [i]t is our role to enforce the legislative intent as expressed through the words used by the Legislature." Lippman v. Ethicon, Inc., 222 N.J. 362, 388 (2015).

The Legislature did not restrict the application of the rebuttable presumption to trials, and the statute is bereft of any language suggesting the Legislature intended such a result. The absence of such a limitation supports our conclusion the Legislature did not intend to impose such a restriction on the application of the presumption. See DiProspero, 183 N.J. at 493 (explaining courts "[o]rdinarily . . . are enjoined from presuming that the Legislature intended a result different from the wording of the statute or from adding a qualification that has been omitted from the statute."). For those reasons alone, we conclude the court erred by finding the rebuttable

presumption set forth in N.J.S.A. 40A:14-118.5(q) is inapplicable at a suppression hearing.

Moreover, the court's finding the rebuttable presumption is inapplicable to a suppression hearing is wholly illogical under the circumstances presented here. See Robson v. Rodriquez, 26 N.J. 517, 528 (1958) (instructing "[a] statute will not be construed so as to reach an absurd or anomalous result."). N.J.S.A. 40A:14-118.3(a) provides that, subject to certain specified conditions and limitations, "every uniformed State, county, and municipal patrol law enforcement officer shall wear a [BWC] that electronically records audio and video while acting in performance of the officer's official duties."[1] N.J.S.A. 40A:14-118.5 provides BWC recordings pertaining to criminal investigations "shall be treated and shall be kept in accordance with the retention period for

[1] The statutory exceptions to the requirement are set forth in N.J.S.A. 40A:14-118.3(a)(1)-(8). Other requirements, conditions, limitations, and restrictions pertinent to BWC recordings and a law enforcement officer's use of BWCs are set forth in N.J.S.A. 40A:14-118.5. N.J.S.A. 40A:14-118.4 authorizes the Attorney General "to promulgate or revise guidelines or directives, as appropriate, to implement and enforce the provisions of" N.J.S.A. 40A:14-118.3 to -118.5. See, e.g., Att'y Gen. Law Enf't Directive No. 2022-1, Update to Body Worn Camera Policy (Jan. 19, 2022); Att'y Gen. Law Enf't Directive No. 2021-5, Directive Revising Policy Regarding Use of Body Worn Cameras (BWCs) and Stored BWC Recordings (May 25, 2021); Att'y Gen. Law Enf't Directive No. 2015-1, Law Enforcement Directive Regarding Police Body Worn Cameras (BWCs) and Stored BWC Recordings (July 28, 2015); see also Off. of the Att'y Gen., Body Worn Camera Policy (2022), https://www.nj.gov/oag/dcj/agguide/directives/BWC-Policy2022-0119.pdf.

evidence in a criminal prosecution," N.J.S.A. 40A:14-118.5(j)(3)(a), and remain subject to "the laws governing the maintenance and destruction of evidence in a criminal investigation or prosecution," N.J.S.A. 40A:14-118.5(s).

Thus, in criminal prosecutions, the rebuttable presumption set forth in N.J.S.A. 40A:14-118.5(q)(2) provides a statutory remedy — a rebuttable presumption exculpatory evidence was destroyed or not captured — to a defendant where a law enforcement officer, employee, or agent failed to adhere to the recording or retention requirements in N.J.S.A. 40A:14-118.3 to -118.5, "or intentionally interfere[d] with a BWC's ability to accurately capture audio or video recordings," and the court also determines the defendant "reasonably asserts that exculpatory evidence was destroyed or not captured." N.J.S.A. 40A:14-118.5(q)(2).

If the motion court's interpretation of N.J.S.A. 40A:14-118.5(q) is accepted, and defendant otherwise satisfies the statute's requirements for the rebuttable presumption, the State would benefit by any failure of law enforcement to adhere to N.J.S.A. 40A:14-118.3 to -118.5's BWC recording and retention requirements or any intentional interference with Officer Russell's BWC's capacity to accurately capture audio and video recordings of the incident at a critical stage of defendant's criminal prosecution — the motion to suppress the evidence on which the charges against him rest. Under

its interpretation, the court could properly decide the suppression motion based on Officer Marsh's BWC recording, which the State properly preserved, while ignoring any violations of N.J.S.A. 40A:14-118.3 to -118.5 related to Officer Russell's BWC and its recordings and without determining if defendant is entitled to the rebuttable presumption under N.J.S.A. 40A:14-118.5(q)(2). The State therefore would suffer no consequence — and defendant would be deprived of the opportunity to establish his entitlement to the statutory remedy — at a suppression hearing, even where law enforcement violates N.J.S.A. 40A:14-118.3 to -118.5's requirements for recording law enforcement's actions with BWCs, retaining the recordings, and ensuring there is no intentional interference with a BWC's ability to accurately capture audio and video recordings.

There is no language in the statute supporting such a result, and limiting application of the rebuttable presumption to trials is inconsistent with the statute's clear purpose of ensuring the use of BWCs and the preservation of BWC recordings as evidence in criminal "prosecutions," N.J.S.A. 40A:14-118.5(s), during which suppression hearings often play an integral part. For example, where, as here, a defendant is charged with a possessory offense, a suppression hearing may result in an order barring the State from relying on evidence essential to its proofs at trial, thereby requiring dismissal of the

charges dependent on admission of the barred evidence. On the other hand, a court may determine challenged evidence was lawfully seized and therefore may be used by the State at trial to prove a required element of a charged offense. In either event, a suppression hearing is a critical proceeding in a criminal prosecution to which the language of N.J.S.A. 40A:14-118.3 to -118.5 plainly applies.

III.

We therefore reverse the court's order denying defendant's suppression motion and remand for further proceedings in accordance with this opinion. Because the motion court considered some of the evidence, including Officer Marsh's BWC recording, made findings based on the evidence without hearing any testimony, and accepted Officer Russell's version of the events in the incident report as credible, the matter shall be assigned to a different judge on remand. See Charmichael v. Bryan, 310 N.J. Super. 34, 49 (App. Div. 1998) (remanding a matter to a different judge because the motion judge expressed opinions, weighed evidence, "and may have a commitment to his findings[.]").

Our decision shall not be construed as expressing an opinion on the merits of defendant's suppression motion. We offer none. The court shall conduct a testimonial hearing on the motion and conduct such related proceedings as it deems appropriate based on the circumstances presented.

The court shall decide the suppression motion anew based on the evidence presented and make findings of fact and conclusions of law supporting its decision. R. 1:7-4. The parties shall be permitted to make all arguments supporting their respective positions based on the evidence.

We also note our determination the rebuttable presumption set forth in N.J.S.A. 40A:14-118.5(q)(2) is applicable at suppression hearings is not a determination defendant is entitled to the presumption. Issues pertinent to whether defendant is entitled to the rebuttable presumption under N.J.S.A. 40A:14-118.5(q)(2), and whether the State can successfully rebut the presumption, like all other issues relevant the disposition of the suppression motion, shall abide the presentation of the parties' arguments and evidence and shall be decided in the first instance by the motion court based on its application of the statutory requirements for the rebuttable presumption in N.J.S.A. 40A:14-118.5(q)(2).

Reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.