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November 25, 2024

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Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
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Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Appellant)
v. Odeanne S. Lawes (Defendant-Respondent)
Appellate Division Docket No. A-0478-24T4
Indictment No. 23-05-0614
Case No. 21004050

Criminal Action: On Leave to Appeal an Interlocutory Order
Granting Suppression of Evidence Entered in the
Superior Court of New Jersey, Law Division
(Criminal), Monmouth County

Sat Below: Honorable Scott C. Arnette, J.S.C.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of
a more formal brief submitted on behalf of the State of New Jersey.

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STATEMENT OF PROCEDURAL HISTORY

The defendant, Odeanne S. Lawes, is charged by way of Indictment Number 23-05-0614 with first-degree possession of a controlled dangerous substance (“CDS”) with intent to distribute, N.J.S.A. 2C:35-5(b)(1), and third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1). Pa1-2.

On or about September 18, 2023, the defendant filed a motion to suppress physical evidence seized during a December 17, 2021 motor vehicle stop. Pa3-4. The Honorable Scott C. Arnette, J.S.C. heard testimony on this motion on January 4, 2024 and February 14, 2024 and oral argument from the parties on April 22, 2024. Pa3, 5; (1T; 2T; 3T).¹ Judge Arnette thereafter reserved decision. (3T:29-13 to 29-17).

On September 10, 2024, Judge Arnette issued an order, with accompanying written statement of reasons, granting defendant’s motion to suppress evidence. Pa3-19. On September 23, 2024, the Honorable Paul X. Escandon, J.S.C., granted the State’s request for a stay of the matter pending the filing of a motion for leave to appeal the grant of suppression with this Court. Pa20.

¹ 1T refers to Transcript of Motion to Suppress, January 4, 2024.
2T refers to Transcript of Motion to Suppress, February 14, 2024.
3T refers to Transcript of Motion to Suppress, April 22, 2024.

The State thereafter moved before this Court for the grant of leave to appeal. On October 17, 2024, this Court granted the State’s motion. The State now submits the following in support of its request for reversal of the lower court’s order of suppression.

STATEMENT OF FACTS

During the week of November 28, 2021, detectives with the Drug Trafficking Central Unit of the New Jersey State Police learned from a confidential information (“CI”) that the defendant, Odeanne Lawes, was selling controlled dangerous substances (“CDS”) – “cocaine, heroin, and pills” – in the Ocean County area. The CI knew this to be true because they had previously purchased CDS from the defendant. As such, the CI was also able to provide a telephone number and associated vehicle, “a black 2015 Audi bearing New York Registration JMZ-****², for the defendant, and describe how the defendant’s CDS operation worked:

The source stated that [the defendant] would go to a source in the City of New York to pick up his large quantities of drugs when he would travel and he would use his black Audi as previously mentioned, the 2015 one bearing New York registration to make that trip.

² To protect confidentiality, the State has omitted the full registration from its brief. The State has included a partial registration herein as documents contained in its confidential appendix, e.g., search warrant and consent to search form for this vehicle, Pa21-25, contain and rely upon the full registration number.

(1T:7-2 to 7-18; 9-11 to 10-23; 44-20 to 45-1; 45-20 to 46-16).

The detectives were able to corroborate aspects of the CI's information: the telephone number and black Audi "came back to" the defendant and the CI confirmed a photo of the defendant was the "right suspect." The ability to "validate and confirm[]" information contained in the CI's tip allowed the detectives to determine the CI was "credible and reliable." (1T:10-1 to 11-16; 33-22 to 36-23; 41-20 to 42-8).

Through their investigation, the detectives also learned defendant worked at a restaurant in Brick Township called "A Taste of the Islands." Surveillance located both the defendant and the black Audi in the restaurant's parking lot. During the week of November 28th, surveilling detectives specifically observed the defendant engage in what, based on their training and experience, "appeared to be a narcotics transaction[s]" with "two vehicles" that had "driven up" and into the restaurant's parking lot. Specifically, the detectives saw the defendant exit the restaurant and retrieve "small items" from inside the Audi. Defendant then would approach the vehicle and "interact" with its occupants of the vehicle. "[A]t that point was the transaction where money was perceived," but not seen, "to be taken and a small item was

tossed” by the defendant “in the passenger seat of the vehicles that had driven up.” (1T:11-17 to 16-22; 46-17 to 54-11).

During this same surveillance period, the detectives followed defendant as he was driven as a passenger in the Audi from the restaurant to an automotive garage in Toms River, where the Audi was driven inside of a garage bay and the door was closed. “A short time” later, the Audi was driven from the garage to a residence in Jackson. While travelling to Jackson, the vehicle was driven in what the detectives perceived to be an evasive manner: “he was making alternate paths that weren’t ... the fastest or most direct route. He was going through neighborhoods, he was taking multiple turns.” (1T:13-18 to 15-12).

Following this surveillance, the detectives applied for, and, on December 9, 2021, the Honorable Michael Collins, J.S.C., granted, a search warrant authorizing the installation of a GPS tracking device on defendant’s Audi. The judicially-authorized GPS tracker was placed on the Audi on December 13, 2021. (1T:20-8 to 24-3; 55-11 to 55-22; 68-5 to 70-2); Pa21-24.

During the week of December 13th, the detectives had the CI engage in a controlled purchase of a specific quantity CDS from the defendant for a specific price in the parking lot of “A Taste of the Islands.” Surveillance officers watched as the defendant exited the rear of the restaurant and “popped

the hood” of the Audi and retrieved “a small item” from therein. The defendant then entered the passenger’s seat of the CI’s vehicle and “interacted” with them for “a few moments” before exiting the vehicle and reentering the restaurant. The CI later confirmed for the detectives what had occurred inside their vehicle: money was provided to the defendant in exchange for CDS. (1T:16-23 to 20-7; 2T:18-24 to 20-4; 69-14 to 70-16).

On December 17, 2021, the GPS tracker allowed the detectives to see defendant do that which the CI had reported. The detectives observed the defendant enter the Audi at “A Taste of the Islands” and then were able to track it as it travelled “in a direct route” to New York. Within “a quick turnaround,” i.e., “[t]wo-and-a-half hours,” defendant left Brick Township, New Jersey, travelled to the Bronx, New York, and was “coming back into New Jersey.” This indicated to the detectives that defendant has “spent very little time actually in New York.” The detectives knew “[b]ased on ... training and experience it’s a common habit where traffickers will go to source cities to supply the large quantities of drugs, enter the city and then try to exit before being noticed.” Because of the very short time defendant spent in New York, detectives were unable to get to his location there in time to conduct surveillance. (1T:24-4 to 25-17; 96-7 to 96-21).

Detectives Derek Jenkins and Joshua Bernard, along with Detective Sergeant Brian Oliver, each operating separate, unmarked vehicles, went to the Garden State Parkway to attempt to locate defendant's Audi. The detectives located the Audi in the area of milepost 120. In the area of milepost 105, the detectives observed defendant "go from the far left lane, switch over two lanes abruptly without lane changes, go over a solid white line and exit" at exit 105 onto Route 36. "[I]n doing so, he actually caused a civilian vehicle that was already exiting to actually slam on their brakes and slow down quickly to avoid a collision." This driving fit the requirements for various motor vehicle infractions, including careless driving, reckless driving, and improper lane change. (1T:25-8 to 28-4; 77-18 to 91-19; 96-22 to 97-3; 111-12 to 111-21; 2T:21-2 to 22-3).

These observed motor vehicle violations were "the final straw." The detectives made the decision that Detective Bernard would initiate a motor vehicle stop of the Audi. Defendant stopped his Audi on Route 36, near the intersection with Hope Road. Detective Bernard and Sergeant Oliver stopped their unmarked vehicles behind the defendant. Detective Bernard approached the Audi on the passenger's side. Defendant, who was the driver and lone occupant of the Audi, provided Detective Bernard with his license and vehicle documents upon request. The detective advised defendant of the motor vehicle

infractions that had been observed. (1T:28-5 to 29-16; 92-12 to 92-14; 97-4 to 97-10; 98-11 to 98-4; 111-21 to 115-14; 2T:22-1 to 23-18).

Defendant appeared “nervous” and failed to “mak[e] eye contact” with Detective Bernard. When asked, defendant told detectives that he had travelled to the Bronx “to pick up beef patties.” Defendant told the detectives that the trip to New York to purchase the patties was worthwhile because they were “cheaper ... in New York.” The detective’s questions “agitated” defendant and defendant’s answers did not make financial sense to the detective. Defendant offered to show the beef patties to the detective. Prior to taking defendant up on this offer, the detective requested defendant’s consent to search the vehicle. Defendant advised that he would grant consent to the search the Audi, “to include any bags, container, trunk and engine compartment.” Defendant’s consent was documented on a consent to search form. During the search of the Audi, conducted by Sergeant Oliver and another detective, cocaine was located under the Audi’s hood. (1T:115-15 to 123-6; 135-4 to 135-6; 144-10 to 145-7; 147-10 to 152-17; 24-17 to 37-2; 48-22 to 49-9; 53-12 to 53-20; 72-6 to 75-1); Pa25.

After hearing testimony from the detectives detailing the above-described facts, Judge Arnette found all three troopers to be “credible,” “believable,” “knowledgeable” witnesses. Pa5-6. Nonetheless, Judge Arnette

found that suppression of the seized drugs was required because “the officers request for consent to search the vehicle, and reliance on previously investigated activity runs afoul of Defendant’s rights.” Pa14. According to Judge Arnette, the detectives did not have the required reasonable suspicion of criminal activity needed to request defendant’s consent to search the Audi because,

the initial motor vehicle stop was not conducted in reliance on the CI’s information provided to the N.J.S.P., nor was it based on reasonable and articulable suspicion that the Defendant was conducting illegal activity involving possession or distribution of CDS ... Rather, Defendant was specifically stopped due to his alleged motor vehicle infractions in violation of N.J.S.A. 39:4-126 and N.J.S.A. 39:4-88b ... [The troopers’] testimony makes it clear – Defendant was detained due to the officers’ reasonable suspicion that the Defendant had violated laws regarding the operation of a motor vehicle. Law Enforcement clearly did not pull Defendant over due to any previously investigated crimes involving possession or distribution of CDS.

Pa15-17.

After excising this motor vehicle stop from the narcotics investigation of which it was an integral part, and for which a judicial finding of probable cause had already been made, Judge Arnette continued by isolating each of the facts presented to the detectives to find each capable of innocent connotations and/or insufficient alone to provide any reasonable suspicion sufficient to warrant the request for consent to search:

The officers observed no suspicious behavior on behalf of the Defendant. ... The Defendant claimed he had driven to New York to purchase burger patties, which were both plainly viewed by the officers in the back seat of the vehicle and mentioned by the Defendant. The officers did not see any CDS, nor were they given any indication during the motor vehicle stop, that Defendant had any CDS in his possession ... the officers cannot simply rely on the Defendant's nervousness, shaking or trembling, or [orneriness].

Pa18 (emphasis in original).

Judge Arnette concluded that “the first prong in [State v.] Carty[], 170 N.J. 632, 647 (2002)” – the existence of “reasonable and articulable suspicion to believe that an errant motorist ... has engaged in, or is about to engage in, criminal activity” – was “not satisfied” because, “[g]iven the totality of the circumstances, the Officers request to search the vehicle was not based on information obtained during the motor vehicle stop.” Pa18. Because this legal conclusion, which is subject to “plenary,” “de novo” review, stands in direct conflict with decades of precedent, the State sought and was granted leave from this Court for interlocutory review. Pa26-27; State v. Boone, 479 N.J. Super. 193, 205 (App. Div. 2024); State v. Cleveland, 371 N.J. Super. 286, 295 (App. Div.), certif. denied, 182 N.J. 148 (2004); State v. Gandhi, 201 N.J. 161, 176 (2010). For the reasons and authorities contained herein, the State respectfully requests this Court’s continued review result in the reversal of the lower court’s order of suppression.

LEGAL ARGUMENT

POINT I

THE LOWER COURT’S ORDER OF SUPPRESSION
SHOULD BE REVERSED [Pa3-19]

In Carty, 170 N.J. at 637, our Court mandated that a request for consent to search made during a motor vehicle stop be supported by “reasonable and articulable suspicion to believe that an errant motorist ... has engaged in, or is about to engage in, criminal activity.” This rule was reactionary, “address[ing] concerns about the then intractable problem of racial profiling on our highways ... and the ‘widespread abuse of our existing law that allow[ed] law enforcement officers to obtain consent searches of every motor vehicle stopped for even the most minor traffic violation.’” State v. Domicz, 188 N.J. 285, 304 (2006) (quoting Carty, 180 N.J. at 644-46); State v. Elders, 192 N.J. 224, 240 (2007). Post-Carty precedent advised officers that “[e]ven though [an] initial stop [is] for a motor vehicle violation,” they would not be “precluded from broadening the inquiry of his stop ‘[i]f, during the course of the stop or as a result of reasonable inquiries initiated by the officer, the circumstances “give rise to suspicions unrelated to the traffic offense.”’” State v. Bernokeits, 423 N.J. Super. 365, 371 (App. Div. 2011) (quoting State v. Dickey, 152 N.J. 468,

479-80 (1998); United States v. Johnson, 58 F.3d 356, 357 (8th Cir.), cert. denied, 516 U.S. 936 (1995)) (emphasis added).

In finding suppression warranted here, Judge Arnette appears to have read the above-emphasized language as reflecting a limit in the rule of Carty and not a limit derived simply from the facts of Carty. Carty and its progeny spoke in terms of facts derived “during the course of the stop” that established reasonable suspicion because it was dealing with stops factually premised solely on motor vehicle violations. The Carty Court wanted to limit an officer’s ability to turn a motor vehicle violation into a vehicle search in every case, thereby decreasing the chance for abuse.

Those facts bear no identity to the facts here. While it is true that the detectives observed defendant committing motor vehicle infractions prior to the stop, providing an independent basis to stop defendant, those motor vehicle infractions and defendant’s behavior following the stop were not the sole facts known by the detectives at the time of the stop. Nothing in Carty and its progeny could or should have been read by the lower court as requiring such a temporally-stunted reasonable suspicion evaluation.

The reasonable suspicion standard that must be met before seeking consent to search requires an evaluation of both “specific and articulable facts,” and the “rational inferences” that can be drawn “from those facts.”

State v. Pineiro, 181 N.J. 13, 20 (2004); State v. Mann, 203 N.J. 328, 338 (2010). It is well-established that reasonable suspicion is a “low burden,” State v. Atwood, 232 N.J. 433, 448 (2018), requiring “something less than the probable cause standard needed to support an arrest.” State v. Thomas, 110 N.J. 673, 678 (1988); State v. Arthur, 149 N.J. 1, 8 (1997) (quoting Adams v. Williams, 407 U.S. 143, 145-46 (1972)) (“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow ... a criminal to escape”).

It is likewise well-settled that reasonable suspicion requires an analysis of the “the totality of the circumstances – the whole picture.” State v. Stovall, 170 N.J. 346, 361 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). Our courts have been instructed to evaluate all of “the facts available to the officer,” and from there to assess whether those facts, when viewed in context with the “officer’s experience and knowledge” and “with rational inference drawn from” those facts, would “warrant a man of reasonable caution in the belief that the action taken was appropriate.” State v. Mann, 203 N.J. 328, 338 (2010); Stovall, 170 N.J. at 361.

By unjustifiably limiting its factual analysis to only those facts that post-dated the observed motor vehicle infractions, the lower court failed to conduct

the totality of the circumstances analysis required of it. The lower court ignored that the stop of defendant's vehicle occurred in the midst of a several-weeks long narcotics investigation that started with a CI tip detailing the involvement of the defendant, his place of employment, and his Audi in drug distribution. The detectives' investigation enabled them to corroborate this tip, both via their own independent observations of the defendant and a controlled purchase of CDS from the defendant's Audi by the CI, who was an admitted prior client of the defendant's drug distribution. The corroboration of these aspects of the CI's tip lent greater credence to the detail in the CI's report that defendant would drive the Audi to New York to purchase CDS. See State v. Smith, 155 N.J. 83, 95-96 (1998); State v. Birkenmeier, 185 N.J. 552, 562 (2006).

Therefore, immediately prior to the stop of the Audi the detectives had sufficient reasonable suspicion to believe that the defendant had done that which the CI had reported knowing the defendant to do: drive to New York to purchase CDS. The detectives possessed a judicially-authorized GPS tracker on defendant's Audi, the authorization for which was premised upon Judge Collins' finding that the investigation of defendant to that point, which rested on a CI tip corroborated by surveillance and a controlled buy, had provided probable cause to believe defendant was using the Audi in connection with

drug distribution. Through the GPS tracker, the detectives further knew that defendant had just travelled in the Audi to New York, and had stayed in New York for a suspiciously-brief period of time. Thus, the detectives had reasonable suspicion to believe that CDS would be located inside the Audi, including potentially under the hood – a location from which the detectives had observed the defendant sell the CI drugs during the controlled buy – before they requested defendant’s consent to search.

By limiting its reasonable suspicion evaluation to only the facts that came after the stop of defendant’s vehicle, the lower court ignored all highly-relevant, pre-stop facts simply because defendant also committed motor vehicle infractions that provided another basis for the stop. In so doing, the lower court acted contrary to well-settled precedent establishing that the reasonable suspicion standard requires an analysis of the totality of the circumstances.

The lower court then compounded this error by again doing that which New Jersey law cautions courts against: allowing a potential “innocent” explanation for defendant’s trip to New York – to buy burger patties – to “control” its reasonable suspicion “analysis.” Mann, 170 N.J. 338-39; Arthur, 149 N.J. at 10. New Jersey law is clear and contrary. While “[p]olice officers should consider whether a defendant’s actions are more consistent with

innocence than guilt,” “simply because a defendant’s actions might have some speculative innocent explanation does not mean that they cannot support articulable suspicions if a reasonable person would find the actions are consistent with guilt.” Ibid.

The lower court’s unquestioning acceptance of defendant’s innocent explanation for his New York trip failed to view the explanation through the lens of the totality of the circumstances, which included a controlled buy of CDS by the CI from under the hood of the Audi and the CI’s report, in an otherwise corroborated tip, that defendant travelled to New York to purchase CDS. Nothing in our law required either the detectives, or the lower court to give such uncritical acceptance to defendant’s innocent explanation. That the lower court did so provides yet reason why this Court should reverse the erroneously-entered order of suppression.

Application of well-settled New Jersey precedent to the facts found by the lower court should have resulted in the only legally-permissible conclusion: that the detectives here possessed sufficient reasonable suspicion of drug activity to support a request for consent to search defendant’s vehicle. The long-term CDS investigation conducted by the detectives here bears no identity to the abusive motor vehicle stops and searches that animated Carty.

The State respectfully requests that this Court confirm this difference by reversing the lower court's order of suppression.

CONCLUSION

For the reasons and authorities set forth at length herein, the State respectfully requests this Court reverse the lower court's suppression order.

Respectfully submitted,

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LETTER BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0478-24
INDICTMENT NO. 23-05-0614-I

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Leave to Appeal from an
v.	:	Interlocutory Order of the
ODEANNE S. LAWES,	:	Superior Court of New Jersey,
Defendant-Appellant	:	Law Division, Monmouth County.
	:	Sat Below:
	:	Hon. Scott C. Arnette, J.S.C.

DEFENDANT IS NOT CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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POINT I

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COUNTERSTATEMENT OF FACTS¹

Defendant Odeanne Lawes moved to suppress drugs discovered during a consent search of his vehicle, which was stopped for various traffic offenses, including careless driving and improper lane change. (Pa 8; 1T 27-22 to 28-4; 1T 96-22 to 97-10)² The traffic stop was effectuated by Detectives Derrick Jenkins, Joshua Bernard, and Brian Oliver, all of whom were members of the State Police Drug Trafficking Unit. There is no dispute that the detectives had been surveilling Lawes for several weeks and that the motive for the traffic stop was to investigate possible narcotics activity.

At the suppression hearing, the State called Jenkins, Bernard, and Oliver as witnesses and elicited testimony regarding their prior investigation of Lawes, as well as the circumstances surrounding the traffic stop.

A. The Prior Investigation

The trial court observed that “[p]rior to the motor vehicle stop, the NJSP had been investigating [Lawes] for some time.” (Pa 6) Specifically, Detectives Jenkins, Bernard and Oliver became aware of Lawes sometime during the week

¹ The defense adopts the procedural facts contained in the State’s brief.

² “Pb” refers to the State’s Appellate Division brief

“Pa” refers to the appendix to the State’s brief

“Ca” refers to the confidential appendix to the State’s brief

“1T” – January 4, 2024, suppression hearing

“2T” – February 14, 2024, suppression hearing

“3T” – April 22, 2024, suppression hearing

of November 28, 2021, when a confidential informant (CI), who was “vetted” by Jenkins, “provided information that [Lawes] had been selling controlled dangerous substances (‘CDS’) in Ocean County.” (Pa 6; 1T 9-11 to 10-23; 1T 11-11 to 11-16) The CI, who claimed to have purchased CDS from Lawes in the past, told the detectives that Lawes was part owner of a restaurant called A Taste of the Islands in Brick Township, drove a 2015 black Audi with New York plates, and uses the Audi to obtain CDS from a source in New York City. (Pa 7; 1T 9-24 to 10-23) The CI, however, did not say where in New York City Lawes’ supplier was located, how often Lawes visited the supplier, what day of the week Lawes visited the supplier, what time of day Lawes visited the supplier, or where in his car Lawes stored CDS. (Pa 7; 1T 45-16 to 46-16)

Based on the information provided by the CI, the detectives began surveilling Lawes at his restaurant. During the week of November 28, 2021, detectives observed Lawes engage in what they believed were two narcotics transactions. (Pa 7) The detectives twice observed Lawes exit the rear door of the restaurant, “retrieve something from inside” his Audi and then “interact with two vehicles that pulled up.” (1T 12-23 to 13-8) The detectives also claimed that they observed Lawes engage in “counter surveillance techniques” when driving the Audi. (1T 23-1 to 23-3) That is, he did not always take the most direct route when traveling between two locations; rather, “[h]e was going through

neighborhoods, he was taking multiple turns,” making it “harder for [police] to surveil [him].” (1T 14-4 to 14-15; 1T 23-1 to 23-7)

On December 9, 2021, the detectives applied for, and were issued, a “30-day GPS tracker warrant,” authorizing the installation of a GPS tracking device on Lawes’ car. The basis for the application was the information received from the CI and the observations the detectives made while surveilling Lawes. (Pa 7; 1T 20-8 to 24-3) The issuing judge found that the detectives’ application established probable cause to believe that Lawes and other identified and yet to be identified individuals were engaging in CDS-related offenses and that the Audi was “being used and continues to be used by Lawes in the furtherance of [those offenses].”³ (Pa 22) The stated purpose of the GPS warrant was to allow members of the State Police to

instantly and continuously track the position and location and receive monitoring signals of the [Audi.] . . . The information provided by the GPS will allow for the covert investigation of the violations of the criminal laws, as well as to identify individuals engaging in them. . . . Its only function is to identify the [Audi] location and travel and transmit monitoring signals as authorized by the Court[.]

(Pa 21-22)

³ Noting that Lawes did not challenge the validity of the warrant, the trial court stated: “The warrant, of course, is presumed valid and I have no basis to presume otherwise.” (1T 62-4 to 63-9)

The tracking device was installed on the Audi on December 13, 2021. (Pa 7) Later that week, the detectives “conducted a controlled purchase of suspected narcotics between [Lawes] and the CI,” during which Lawes was observed by detectives exit the rear door of his restaurant, pop the hood of his Audi and retrieve a small item. He then got into the CI’s vehicle, where he handed the CI suspected drugs in exchange for money. (Pa 7-8; 1T 18-18 to 19-19)

B. The Traffic Stop

On the afternoon of December 17, 2021, the detectives learned through the GPS tracker that Lawes drove from his restaurant in Brick to the Bronx, New York, where he stayed for a short period of time before heading back to New Jersey. The “quick turnaround” raised in the detectives’ minds the possibility that Lawes went to New York to buy CDS. (1T 24-4 to 25-5) The detectives had no other reason to believe that Lawes’ trip to New York that day was drug-related; they had not received any information from the CI or anyone else that Lawes would be traveling to New York to purchase drugs on December 17th. (1T 77-18 to 78-1)

The detectives decided to investigate further. They “positioned themselves at mile 120 on the Garden State Parkway” in unmarked cars and waited for the Audi to pass. (Pa 8; 1T 25-18 to 27-3; 1T 85-17 to 86-5) When Jenkins spotted the Audi, he and the other detectives “began to trail [it] at a

distance of fifty to four hundred yards.” (Pa 8; 1T 26-11 to 27-3; 1T 89-1 to 90-8) They followed the car for approximately 15 miles (1T 89-22), during which they observed the Audi driving in an “erratic” manner, “fluctuating the speeds, driving above the speed limit, below the speed limit, changing lanes.” (1T 98-6 to 98-18)

The “final straw” that caused the detectives to pull the car over occurred at mile marker 105 (1T 98-11 to 98-24), when they observed the Audi “go from the far left lane, switch over two lanes abruptly without lane changes, go over a solid white line and exit” the parkway, “caus[ing] a civilian vehicle that was already exiting to actually slam on their brakes and slow down quickly to avoid a collision.” (1T 27-6 to 27-14) At that point, the detectives “determined . . . that the vehicle had to be stopped for the safety of the general public around us, based on those egregious motor vehicle operations.” (Pa 17; 1T 91-8 to 91-12)

Detective Bernard initiated the traffic stop by activating his overhead lights. The Audi pulled over without incident. (1T 113-13 to 113-24) When Bernard approached the car, he asked Lawes for his driving credentials, which Lawes provided, and advised Lawes that he was stopped for “his erratic driving, his careless speed, not using his signals, and that he almost caused a motor vehicle accident on the Garden State Parkway.” (1T 114-18 to 115-14)

Bernard asked Lawes where he was coming from, and Lawes said that he had been in New York. (1T 116-7 to 116-9) Bernard then asked Lawes “what he was doing there, what his itinerary was for the day.” (1T 116-9 to 116-11) Lawes responded that he went to the Bronx to buy meat patties for his restaurant. (1T 116-11 to 116-12) Bernard asked Lawes why he would travel all the way to the Bronx to buy meat patties, and Lawes explained that they were cheaper there. Bernard continued to challenge Lawes’ explanation, telling Lawes that it cannot be cheaper to buy meat patties in New York when gas and tolls are factored into the equation. According to Bernard, Lawes became agitated by the questions about the meat. (1T 116-12 to 116-19)

At some point, Bernard testified, when his “questions started becoming more investigative,” he decided to read Lawes his Miranda rights. (1T 135-10 to 135-12) Bernard explained: “Once he provided me his itinerary, at that point, I was very suspicious and with his prior history and information provided from a confidential source, I provide him his Miranda warnings before I asked him further questions.” (1T 136-6 to 136-10)

At the suppression hearing, Bernard continued to maintain that “it wasn’t reasonable” for a restaurant owner to travel to New York to buy meat patties when there are stores in New Jersey that sell them. (1T 137-4 to 137-17) However, when examined by the court, Bernard admitted that he saw a “large

box” of meat patties on the backseat of Lawes’ car. He also admitted that it was not a box of ordinary hamburger patties; rather, it was a large box of Jamaican meat patties. (1T 150-14 to 152-2) On cross-examination, Bernard admitted that he has never owned a restaurant or any other type of business, let alone a restaurant specializing in Caribbean cuisine. (1T 137-1 to 137-7)

According to Bernard, after receiving his Miranda warnings, Lawes said he “would show me the beef patties that are in his vehicle, because again, I was questioning if he was telling me the truth or not.” (1T 117-7 to 117-10) It was at that point that Bernard had Lawes sign a consent-to-search form authorizing the police to search under the hood of his car, where they ultimately discovered drugs. (1T 117-10 to 123-18)

C. The State’s Argument and the Court’s Ruling

The State urged the court to find that the warrantless search of Lawes’ Audi was justified under the consent search exception to the warrant requirement. The State posited that the validity of a vehicle consent search requires a two-prong analysis and that the State met its burden as to each prong: “The way that the State sees this case as we have articulated in the past is in two separate stages. . . . We see whether or not the motor vehicle stop itself was lawful[.] . . . And then the second part is whether or not the officers had

reasonable and articulable suspicion to ask to consent to search.” (3T 16-5 to 16-6; 3T 22-23 to 23-3)

The State argued that the stop was lawfully “conducted due to the motor vehicle infractions,” “lawful . . . because of the motor vehicle infractions.” (3T 16-7 to 16-8; 3T 22-23 to 23-1) With respect to the search, the State argued that the information the detectives had gathered during their prior investigation of Lawes, “coupled with” Lawes’ “behavior” and “responses” to Detective Bernard during the course of the stop, furnished the detectives with reasonable suspicion to ask for consent to search. (3T 23-4 to 23-9)

After determining that the testimony of the detectives was credible (Pa 5-9), the court made the following findings. The court found the stop was lawful because the detectives observed what they reasonably believed were violations of the traffic code. (Pa 12) The court further found that it was clear from the testimony the traffic infractions were the sole basis for the stop (Pa 15-17), *i.e.*, the police did not have “reasonable and articulable suspicion the Defendant was conducting illegal activity involving possession or distribution of CDS” when they decided to pull him over. (Pa 15) While the court found the detectives’ probing questions about Lawes’ travel itinerary “reasonable” (Pa 14), it rejected the notion that reasonable suspicion of criminal wrongdoing evolved from

Lawes' behavior or responses to those questions, or from anything the detectives observed during the course of the stop. (Pa 17-18)

The court noted,

When the officers looked into the back seat of the vehicle, the officers did plainly observe frozen burger patties in the back seat, verifying [Defendant's] account of the reason for his trip. The officers notably did not observe the Defendant crouching down, huddling in the car, overtly hiding anything, nor were any suspicious bulges observed or a pat down deemed necessary at the scene.

(Pa 9)

The court also noted that aside from the general claim that Lawes appeared nervous and failed to make eye contact,

The officers observed no suspicious behavior on behalf of the Defendant. The Defendant answered the officers' questions clearly, and truthfully. The Defendant claimed he had driven to New York to purchase burger patties, which were both plainly viewed by the officers in the back seat of the vehicle and mentioned by the Defendant. The officers did not see any CDS, nor were they given any indication during the motor vehicle stop that the Defendant had any CDS in his possession.

(Pa 17-18)(emphasis in original) Accordingly, the court concluded that the detectives did not have a valid basis to ask Lawes for consent to search his car.

LEGAL ARGUMENT

POINT I

THE MOTION COURT CORRECTLY FOUND THAT THE CONSENT SEARCH OF LAWES' CAR WAS UNLAWFUL BECAUSE, DURING THE COURSE OF THE PRETEXTUAL TRAFFIC STOP, POLICE FAILED TO DEVELOP REASONABLE AND ARTICULABLE SUSPICION OF CRIMINAL WRONGDOING BEFORE ASKING LAWES FOR CONSENT TO SEARCH.

The State contends that the motion court improperly focused on what transpired “during the course of the stop” because, unlike in “Carty^[4] and its progeny,” the stop in this case was not “factually premised solely on motor vehicle violations.” (Pb 11)(emphasis in original) That is, because the officers had knowledge of Lawes from their prior investigation, “the motor vehicle violations and [Lawes’] behavior following the stop were not the sole facts known to the officer.” (Pb 11) The State then asserts, for the first time on appeal, that based on the prior investigation, the police had “sufficient reasonable suspicion” to believe that Lawes went “to New York to purchase CDS,” and thus a valid basis to stop the car, independent of the traffic infractions. (Pb 13) The State also contends that in finding that the police did not have reasonable suspicion of wrongdoing before asking for consent to search, the court “failed to conduct the totality of the circumstances analysis required of it” by

⁴ State v. Carty, 170 N.J. 632, 647 (2002).

improperly “ignor[ing]” the information known to the police from the prior investigation and giving “uncritical acceptance” to Lawes’ explanation as to why he went to New York. (Pb 12-13, 15) The State’s arguments are without merit.

The State seems to be confusing the legal basis for the stop (the traffic infractions) with the motive for the stop (a hunch, based on information from the prior investigation), and conflating the two requirements for a valid consent search under Carty: (1) that the car was lawfully stopped, and (2) that police had reasonable suspicion of criminal wrongdoing before asking for consent to search. Although Lawes was the subject of an ongoing narcotics investigation and the motive for the car stop was to investigate possible drug activity, the sole legal basis for the stop was the traffic infractions. In other words, the police conducted a pretextual stop. That is, the police used the traffic infractions as a pretext to stop Lawes’ car on a hunch that it would lead to reasonable suspicion or probable cause for a drug offense. Thus, the central question before the motion court was whether, during the course of the stop, the police developed reasonable and articulable suspicion of criminal wrongdoing before asking Lawes for consent to search, as required under Carty, 170 N.J. at 647 .

In answering that question, the court did not improperly ignore the prior investigation, as the State contends. Nor did it give “uncritical acceptance” to

the Lawes' explanation for his trip to New York. Rather, in a comprehensive and thoughtful opinion, the court properly considered the totality of the circumstances presented, including the prior investigation, to the extent it was relevant to the analysis; and the court's finding that Lawes answered the detectives' roadside questions truthfully was fully supported by the record. Therefore, the court's decision granting suppression must be affirmed.

A. The Prior Investigation Provided Police With A Motive To Conduct A Pretextual Traffic Stop. It Did Not Furnish Police With Reasonable Suspicion To Stop The Car, Independent Of The Traffic Infractions.

In Carty, the Court held that in order to request consent to search a car following a valid stop, police must have reasonable and articulable suspicion that the search will reveal evidence of criminal wrongdoing, prior to making the request. 170 N.J. at 635. Thus, as prosecutor below correctly observed, in order to establish the validity of a consent search under Carty, the state must demonstrate: (1) that there was a lawful basis to stop the car, and (2) police had reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent.

To lawfully stop an automobile, the police must have "reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed." Carty, 170 N.J. at 639-40; see also State v. Sloane, 193 N.J. 423, 432 (2008)("As a seizure, a traffic stop is lawful if it is reasonable.

That requirement may be met where the police have probable cause to believe that a traffic violation has occurred.”)(internal quotation marks omitted.) Therefore, the police may lawfully stop an automobile when they have reasonable suspicion to believe the driver is engaged in criminal wrongdoing, or when they observe the driver commit a traffic offense, even one that is minor.

Moreover, “courts will not inquire into the motivation of a police officer whose stop of an automobile is based upon a traffic violation committed in his presence.” State v. Kennedy, 247 N.J. Super. 21, 29 (App. Div. 1991). Police are permitted to use a traffic infraction as a pretext to stop a vehicle on a hunch that it will lead to reasonable suspicion or probable cause for a more serious crime. Whren v. United States, 517 U.S. 806 (1996); Kennedy, 247 N.J. Super. at 29 (“The fact that the justification for the stop was pretextual [is] . . . irrelevant.”). In fact, New Jersey police are instructed that when they suspect a vehicle’s occupants of “possible criminal activity,” they are permitted to “watch [the vehicle] for a few moments from a discreet distance (without activating [their] overhead and ‘takedown’ lights),” in the hope of “fortuitously observ[ing] a very minor Title 39 violation” that will serve as a valid “pretext” to stop the car for the purpose of “pursu[ing] an investigation into matters that are wholly unrelated to the observed Title 39 infraction,” e.g., “an investigation

into whether the driver is [in possession of contraband].” Attorney General, [Eradicating Racial Profiling] Companion Guide at 104-106 (2005).⁵

When the lawfulness of an automobile stop is based on reasonable suspicion that the driver is involved in criminal wrongdoing, the police will have reasonable suspicion of criminal wrongdoing at the outset of the stop. See, e.g., State v. Smart, 473 N.J. Super. 87, 100 (App. Div. 2022), *aff’d* on other grounds, 253 N.J. 156 (2023)(finding reasonable suspicion to prolong car stop for dog sniff where police has reasonable suspicion of criminal activity to stop, based on confidential sources and officers’ observations of defendant engaging in suspected narcotics activity “during their continuous, same-day surveillance”). On the other hand, as the State acknowledges in its brief, when the lawfulness of an automobile stop is based on an observed traffic offense, the police may ask for consent to search the car only if, during the course of the stop, reasonable suspicion of criminal wrongdoing arises. (Pb 10)

In this case, the prosecutor below did not argue that the prior investigation provided reasonable suspicion for the stop. The prosecutor argued that the traffic infractions provided reasonable suspicion for the stop and the information from the prior investigation, “coupled with” Lawes’ “behavior” and “responses” to

⁵ Available at: <https://dspace.njstatelib.org/items/3dea1d6b-9f35-4787-b10f-6b74ab2e5f7f>

the roadside questioning, during the course of the stop, provided reasonable suspicion to request consent to search. (3T 23-4 to 23-9) Implicit in this argument is that the detectives did not have reasonable suspicion to believe that Lawes traveled to New York to buy drugs on December 17, 2021, based on the prior investigation alone.

On appeal, the State takes a different position, arguing there was reasonable suspicion for the stop, independent of the traffic infractions: “[I]mmediately prior to the stop of the Audi the detectives had sufficient reasonable suspicion to believe that the defendant had done that which the CI had reported knowing the defendant to do: drive to New York to purchase CDS.” (Pb 13) That is simply wrong. A CI’s tip can furnish reasonable suspicion for an investigatory stop when it is sufficiently reliable. A non-specific tip, devoid of any detail or predictive events is not sufficiently reliable, even from a CI whose veracity has been demonstrated. State v. Birkenmeier, 185 N.J. 552 (2006), provides an example of the type of detail and predictive facts that give rise to reasonable suspicion. In that case, a CI with demonstrated veracity informed police that the defendant, who makes frequent trips to Long Branch to distribute CDS, would be distributing CDS later that day. In addition to providing “particularized information concerning defendant,” including defendant's name, address, physical description, as well as the make, model and license tag number

of defendant's car, the CI provided hard-to-know, predictive facts: that “defendant would be leaving his home at 4:30 p.m. to make a marijuana delivery” and “would be carrying the drugs in a laundry tote bag.” Id. at 561.

In this case, about three weeks prior to the stop, the CI informed the detectives that Lawes travels to New York to buy drugs. The CI provided no other details: they did not say where in New York City Lawes gets drugs, how often Lawes goes to New York for drugs, or that Lawes travels to New York on a particular day or time. (Pa 7; 1T 45-16 to 46-16) The CI did not tell the detectives about any upcoming trips to New York that Lawes had planned, let alone that he had a trip planned for December 17, 2021. The CI’s vague “tip” about New York, even when coupled with the “quick turnaround,” did not provide detectives with any more than a mere hunch that Lawes purchased drugs when he visited the Bronx that day, especially when Lawes, whose vehicle was registered in New York, ostensibly had a connection to that state.

Indeed, it is clear from their testimony and actions that the detectives aware that the CI’s “tip,” even when coupled with the “quick turnaround,” did not provide them with reasonable suspicion to stop the car. So they did what they are trained to do when they have a hunch that a motorist is traveling with drugs: they conducted a pretextual traffic stop. They discreetly “tailed” Lawes’ car and when they observed multiple traffic code violations, they effectuated a

stop, in the hope that their hunch would evolve into reasonable suspicion or probable cause for drug possession. Detective Bernard's testimony makes clear that the stop began as a typical traffic stop and became more "investigative" as he probed the "truth" of Lawes' stated reason for visiting New York, in what was clearly an effort to develop reasonable suspicion for a consent search. (1T 117-7 to 117-10; 1T 135-10 to 136-10)

B. The Court Correctly Found That The Detectives' Hunch Did Not Evolve Into Reasonable Suspicion To Request Consent For A Vehicle Search.

The State argues that the court's reasonable suspicion analysis was flawed because it ignored all the information known to the detectives as a result of the prior investigation, and was unduly focused on what occurred during the traffic stop. The court did not ignore the prior investigation: the court heard extensive testimony about the prior investigation and made extensive factual findings regarding the prior investigation in the course of rendering its decision. Rather, the prior investigation had limited value to the narrow issue before the court. The prior investigation, particularly the CI's tip about New York, was the basis of the detective's hunch that Lawes went to New York to buy drugs on December 17. The question before the court was not whether the detectives' hunch was legitimately based on the prior investigation. Of course it was. The question before the court was whether the detectives' hunch – which was legitimately

based on the prior investigation – evolved into reasonable suspicion, during the course of the traffic stop.

Given the prior investigation, any number of circumstances may have been sufficient to elevate the detectives’ hunch to reasonable suspicion, such as “the overwhelming odor of air freshener,” suspiciously “large bags in the cargo hold,” or “conflicting accounts of his trip itinerary.” See, e.g., State v. Nelson, 237 N.J. 540, 555 (2019) (finding reasonable suspicion evolved during course of pretextual traffic stop). In this case, there were no such circumstances.

At the suppression hearing, the State argued that Lawes’ “behavior” and “responses” to the Detective Bernard’s roadside questions, “coupled with” the information the detectives knew before the stop, gave rise to reasonable suspicion. (3T 23-4 to 23-9) The court rightly rejected this argument. First, as the court noted, aside from general nervousness and avoiding eye contact, Lawes did not engage in any suspicious behavior. (Pa 17-18) And with respect to Lawes’ responses regarding his itinerary, not only were they not contradictory, they were verifiably truthful, as the court correctly found. Compare Nelson, 237 N.J. at 547. (“At first, Nelson told the detective he had been in the Bronx to visit his aunt and was now on his way to Philadelphia to visit his cousin, but later Nelson stated he had been visiting his cousin in New York and was heading to

Philadelphia to visit a friend. Nelson failed to give exact addresses of the individuals whom he visited, in both instances.”).

On appeal, the State argues that the court improperly gave “uncritical acceptance to defendant’s innocent explanation” that he went to the Bronx to buy meat patties. (Pb 15) In support, the State cites the Supreme Court’s warning in State v. Arthur, 149 N.J. 1, 10 (1997), that “simply because a defendant’s actions might have some speculative innocent explanation does not mean that they cannot support articulable suspicions if a reasonable person would find the actions are consistent with guilt.” (Pb 15) Lawes’ explanation for his visit to New York was not “some speculative innocent explanation.” Every aspect of his explanation was verified:

- when asked where he was coming from, Lawes said he came from New York / the detectives knew for a fact he was telling the truth because the GPS confirmed he was in the Bronx;
- when asked for his itinerary, Lawes said he went to the Bronx to buy meat patties for his restaurant, A Taste of the Islands / the detectives knew for a fact he was he was telling the truth about owning a restaurant because their investigation confirmed it.

While the detectives may have had reason to question whether Lawes really went to the Bronx to buy meat patties if there had been no meat patties in his car, the carton of frozen meat patties on the back seat verified that component of his explanation as well. Under these circumstances, no reasonable person would find that Lawes was lying about his reason for visiting New York.

Because every aspect of Lawes’ explanation was objectively verified, the court’s finding that Lawes provided a truthful explanation for his trip was fully supported by the record and thus owed deference. State v. Hubbard. 222 N.J. 249, 262 (2015)(“Appellate courts reviewing a grant or denial of a motion to suppress must defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record.”). In the absence of other circumstances suggesting that Lawes was traveling with drugs in his car, Lawes’ truthful explanation for his visit to New York did not confirm the detectives’ hunch that he visited New York to purchase drugs. Therefore, the court correctly found that the detectives lacked reasonable suspicion to request consent to search. Accordingly, the courts order granting suppression must be affirmed.

CONCLUSION

For the reasons set forth above, defendant urges this Court to affirm the trial court’s order granting suppression.

Respectfully submitted,

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