SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3339-22T4

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the
v.	:	Superior Court of New Jersey, Law Division, Ocean County.
RICKY A. GALLOWAY,	:	
Defendant-Appellant.	:	Indictment No. 22-09-1636-I
	:	Sat Below:
	:	Hon. Rochelle Gizinski, J.S.C. and Hon. Guy P. Ryan, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

New Jersey's Constitution and statutes provide concrete rules that police officers must follow to ensure fairness for those accused of crimes. In this case, the State violated multiple constitutional principles and statutory provisions. Those violations were critical because defendant Ricky A. Galloway, Jr.'s convictions are based solely on the evidence seized in two unconstitutional searches.

First, officers from the Toms River Police Department ("TRPD") sought and executed a search warrant that was narrowly aimed at a car in Toms River Township ("Toms River"). Indeed, the warrant affidavit specified that the probable cause for the warrant was purported drug sales from the car in Toms River. A Toms River municipal court judge then issued the search warrant, which explicitly limited its execution to the car while traveling in Toms River. The Toms River judge had no occasion to decide if probable cause existed anywhere but Toms River. No decision was ever made—or could have been made—on whether the purported Toms River drug sales from the car supported a search of the car elsewhere. And yet, the TRPD officers executed the search warrant while Mr. Galloway was driving in Lakewood Township ("Lakewood")—not Toms River. In doing so, the officers exceeded the scope

of the warrant's plain text and violated their own and the authorizing municipal judge's statutorily defined territorial jurisdictions.

Second, after the TRPD officers searched the car and placed Mr. Galloway under arrest, they used unconstitutional threats to coerce his consent to a search of his Lakewood home. Mr. Galloway asked about the consequences of exercising his constitutional right to decline consent because his wife was battling cancer at the home and his young grandchildren were there. In response, officers threatened that if Mr. Galloway did not consent, the officers would "write a search warrant" and "we're gonna tear through the house." They also promised that, regardless of consent, "either way we're going back to the house . . . it's either with your cooperation or without your cooperation." Just as problematic, officers then suggested to Mr. Galloway that the police—not the court—would decide whether the search would occur. And, the officers made these coercive remarks notwithstanding that they lacked an objectively reasonable and articulable suspicion that any contraband was at the home—a prerequisite before seeking consent.

Because each of these transgressions is of constitutional magnitude, this Court should reverse the order of the hearing court and rule that the fruits of the car and home searches be excluded.

PROCEDURAL HISTORY[2]

On September 8, 2022, an Ocean County grand jury returned Superseding Indictment Number 22-09-1636, encompassing allegations from two distinct encounters Mr. Galloway had with police in Lakewood—the first with Lakewood Township Police Department officers on August 6, 2020 (Counts One to Four), and the second with TRPD officers on August 7, 2020 (Counts Five to 13). The charges were as follows: third-degree possession with intent to distribute fentanyl, N.J.S.A. 2C:35-10a(1) (Count One); third-degree possession with intent to distribute fentanyl, N.J.S.A. 2C:35-5a(1) and 2C:35-5b(5) (Count Two); third-degree possession of cocaine, N.J.S.A. 2C:35-10a(1) (Count Three); second-degree possession with intent to distribute cocaine, N.J.S.A. 2C:35-5a(1) and 2C:35-5b(2) (Count Four); third-degree possession of fentanyl, N.J.S.A. 2C:35-10a(1) (Count Five); third-degree possession with intent to distribute fentanyl, N.J.S.A. 2C:35-5a(1) and 2C:35-5b(5) (Count Six); third-degree possession of cocaine, N.J.S.A. 2C:35-10a(1) (Count Seven); third-degree possession with intent to distribute cocaine, N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) (Count Eight); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5b(1) (Count Nine); fourth-degree

[2] This section recounts only the procedural history most relevant to Mr. Galloway's current appeal of his motion to suppress evidence.

possession of a large-capacity magazine, N.J.S.A. 2C:39-3j (Counts 10 and 11); second-degree possession of a firearm while engaged in certain drug activity, N.J.S.A. 2C:39-4.1a (Count 12); and second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7b(1) (Count 13). (Da 8-14)[3]

On September 14, 2020, Mr. Galloway moved to suppress the physical evidence retrieved by TRPD officers in the August 7, 2020, searches of his car and home in Lakewood. On June 30, 2022, the Honorable Rochelle Gizinski, J.S.C., held a hearing on that motion. (1T) Judge Gizinski subsequently issued an oral opinion and an order denying the motion. (2T4-4 to 19-14; Da 65)

Some months later, after being permitted to proceed pro se, Mr. Galloway filed a motion to reconsider Judge Gizinski's order denying suppression. The Honorable Guy P. Ryan, J.S.C., held a hearing (3T3-17 to 27-15) and issued an order denying the pro se reconsideration motion on March 28, 2023 (Da 87-101).

[3] The following abbreviations to the record will be used:
Da – Appendix to Defendant-Appellant's Brief
Dca – Confidential Appendix to Defendant-Appellant's Brief
1T – June 30, 2022 Transcript (hearing on suppression motion)
2T – July 28, 2022 Transcript (oral decision on suppression motion)
3T – March 28, 2023 Transcript (hearing on motion to reconsider; plea)
4T – June 2, 2023 Transcript (hearing on sentencing)

On March 28, 2023, after his pro se motions[4] were denied, Mr. Galloway pled guilty to two counts pursuant to a negotiated plea agreement: third-degree possession with intent to distribute fentanyl, contrary to N.J.S.A. 2C:35-5a(1) and 2C:35-5b(5) (Count Six); and second-degree certain persons not to possess a firearm, contrary to N.J.S.A. 2C:39-7b(1) (Count 13). (3T30-16 to 50-25; Da 103-114) Both counts exclusively concerned contraband that was recovered in the August 7, 2020, car and home searches in Lakewood.

In exchange for his plea, the State requested that the court dismiss the remainder of the indictment and impose a seven-year prison sentence with five years of parole ineligibility on Count Six, and a concurrent five-year prison sentence with five years of parole ineligibility on Count 13. (Da 106; 3T30-16 to 50-25) On June 2, 2023, Judge Ryan sentenced Mr. Galloway to the recommended sentence. (4T11-10 to 17-21; Da 111-114) On July 7, 2023, Mr. Galloway filed a notice of appeal. (Da 115-118)

[4] After successfully moving to represent himself pro se, Mr. Galloway also filed a motion to dismiss the indictment, another motion to suppress, and a motion requesting that Judge Ryan recuse himself from the case. The court also denied those motions. (3T3-17 to 27-15; Da 66-86, 102)

STATEMENT OF FACTS

A. Toms River Police Obtain a Warrant from the Toms River Municipal Court to Search a Car Located in Toms River

On August 5, 2020, TRPD Patrolman Louis H. Taranto III filed an affidavit (Dca 1-7) with the Toms River Township Municipal Court seeking a search warrant for a silver 2002 Jaguar S-Type car "within the Township of Toms River" bearing a particular registration number. (Dca 1) Officer Taranto stated that he possessed probable cause that drugs and other contraband would be found in the car. (Dca 1)

In his affidavit, Officer Taranto explained that he had previously met with a confidential informant ("C.I.") "[d]uring the week of July 20, 2020." (Dca 4) At that meeting, the C.I. told Officer Taranto that the C.I. was familiar with a man named "Richard Galloway Jr." who purportedly "distributes controlled dangerous substances (CDS) in Toms River, New Jersey." (Dca 4) The C.I. said that the man "operates a silver 2002 Jaguar S Type" bearing a certain license plate "and utilizes this vehicle to distribute CDS." (Dca 4) After describing the man's appearance, the C.I. identified a photograph of "Richard Galloway Jr." from the TRPD's "Spillman database" as the individual. (Dca 5)

The following week, the affidavit continues, Officer Taranto provided the C.I. funds to purchase drugs from the suspect while under police surveillance. (Dca 5) The suspect arrived at the predetermined location driving

the silver Jaguar. (Dca 5) Officer Taranto describes that "the two were observed meeting with one another where they appeared to be exchanging items." (Dca 5) The C.I. later handed over to police what police concluded was heroin the C.I. had acquired from the individual. (Dca 5-6)

Based on Officer Taranto's affidavit, on August 5, 2020, the Honorable James J. Gluck, J.M.C., of the Toms River Township Municipal Court, issued a search warrant (Dca 8-9) based on "probable cause . . . that in and upon a certain vehicle within the TOWNSHIP OF TOMS RIVER . . . [namely] a Silver 2002 Jaguar . . . registered to [redacted] Lakewood," police would find contraband, including "heroin and other controlled dangerous substances." (Dca 8) The warrant included the Jaguar's license plate and VIN numbers. (Dca 8)

Officer Taranto later testified at the suppression hearing that he applied to the Toms River Municipal Court—not the Lakewood Municipal Court—"[b]ecause our probable cause had occurred in Toms River" and police were not "seeking a search warrant for . . . Mr. Galloway's residence" in Lakewood. (1T13-16 to 24)

B. Toms River Police Effectuate a Car Stop of Mr. Galloway in Lakewood to Execute the Toms River Search Warrant

The following facts are derived from Officer Taranto's testimony at the suppression hearing. (1T4-6 to 95-17) At 2 p.m. on August 7, 2020—two days

after Judge Gluck issued the Toms River search warrant—TRPD officers established surveillance on Mr. Galloway's Lakewood home. Officer Taranto testified that police sought to "maintain surveillance in the hopes that he traveled in the Toms River area." (1T8-6 to 18) If Mr. Galloway crossed into Toms River, Officer Taranto explained, "at that point, we [i.e., the TRPD officers] would conduct a motor vehicle stop of his vehicle and execute [the] court-authorized search warrant that I had obtained prior." (Ibid.)

After Mr. Galloway left his Lakewood home in the Jaguar, TRPD officers observed him drive throughout Lakewood for up to an hour, as he stopped at three locations during which he met with unknown individuals. (1T17-2 to 20-18) Officer Taranto suspected that Mr. Galloway was engaged in drug transactions out of the car, but officers did not stop him at any of these locations. (Ibid.) Officer Taranto testified that, even after seeing these Lakewood stops, the officers "hoped to stop [Mr. Galloway] in Toms River"—not in Lakewood—to effectuate the search warrant. (1T21-12) In his investigation report, Officer Taranto confirmed that "[i]f and when Mr. Galloway travelled into the Toms River area he would then be stopped by a TRPD marked unit." (Da 56)

Although TRPD officers observed Mr. Galloway driving near Lakewood's border with Toms River, he never actually entered Toms River.

(1T27-4 to 29-20) Worried that he may drive deeper into Lakewood—and even further from their jurisdiction in Toms River—Officer Taranto instructed two marked TRPD vehicles to park at a Wawa along Route 70 in Lakewood to pull over Mr. Galloway and execute the search warrant. (1T21-6 to 12, 25-13 to 30-10; Da 57) As shown on dashcam footage (Da 15 at 3:10:53 to 3:13:00), after Mr. Galloway drove past the Wawa in the Jaguar, the marked police cars turned on their lights and began to follow him. Mr. Galloway stopped the car in the parking lot of a Lakewood car dealership. (1T37-23 to 37 to 44-23) Officer Taranto testified that, throughout their surveillance, Mr. Galloway did not drive into Toms River and "was in Lakewood the entire time." (1T79-15 to 20)

Uniformed and plainclothes officers immediately removed Mr. Galloway from the car and placed him under arrest for prior pending charges. (Da 15 at 3:13:00 to 3:14:30; 1T45-15 to 50-11) Officers then executed the search warrant on the car, finding a handgun, 234 wax folds of heroin, and a small amount of cocaine. Police also located two bullets in Mr. Galloway's jacket pocket and $1,608 in his pants pocket. (Id.; Da 51)

C. Toms River Police Eventually Obtain Mr. Galloway's Consent to Search His Lakewood Home

Moments after Mr. Galloway's arrest and the car search, a TRPD officer stated to Mr. Galloway that "[w]e're going back to the house," and asked him

"[w]ho's back in your house right now?" (Da 17)[5] Mr. Galloway explained that his wife and grandchildren were at his home, and that his wife was sick with cancer. (Da 18; 1T85-20 to 86-9) The officers then offered Mr. Galloway a choice: "Right now we have enough to write a search warrant on your house" or "we can be a gentlemen [sic] and we can go back, and you can give us consent and we can find whatever else you've got in there." (Da 18) But, officers explained, "[e]ither, either way we're going back to the house . . . it's either with your cooperation or without your cooperation." (Da 18) Officer Taranto then stated "[i]f you're gonna give us consent then yeah, we'll, we'll be, you just tell us where everything is, we're not going to tear your house apart. Okay? We're cool with that?" (Da 18; Da 15 at 3:14:00 to 3:17:00)

Soon after, Officer Taranto began reading aloud the Consent to Search Form. (Da 24-25) But Mr. Galloway quickly stopped him and, although much of what he says is not captured on audio, the dashcam video shows Mr. Galloway speaking to Officer Taranto uninterrupted for nearly 40 seconds. (Da 23-24; Da 15 at 3:22:20 to 3:23:30) During this time, the audio captured Mr. Galloway stating that "I just want you to be respectful." (Da 24; Da 15 at

[5] At the suppression hearing, the State introduced a listening aid which transcribes the audible portions of the dashcam video. (Da 16-50) Some of the statements made on the video—including much of what Mr. Galloway says—are indiscernible and thus are depicted as "inaudible" in the listening aid. Mr. Galloway does not dispute the accuracy of the listening aid's transcription.

3:22:55 to 3:23:00) Officer Taranto testified that Mr. Galloway expressed additional concern that the search would upset his ill wife. (1T61-11 to 63-20; see 1T72-9-11, 85-20 to 86-9) According to Officer Taranto, "at that point [Mr. Galloway] was thinking about consent or what if he decided not to grant consent and we were in the process of informing him that we would at that point apply for a search warrant." (1T61-11 to 63-20)

Officer Taranto then read the entire pre-written Consent to Search Form to Mr. Galloway. (Da 25; Da 15 at 3:23:30 to 3:26:20) Although what Mr. Galloway says next is mostly inaudible, the officers' audible responses indicate that Mr. Galloway again asked what would happen if he did not consent. An officer then told Mr. Galloway that, if he did not provide consent, "[w]e'd wind up going back to our headquarters to write a search warrant, we'll come back. And make entry into the house. So basically you're saving us some time here and you're saving yourself a little bit of heart ache. We write a search warrant, we're gonna tear through the house. You know what I mean?" (Da 25) At that point, after remarking that "[y]ou guys did that one time," Mr. Galloway signed the consent to search form. (Da 25; see Da 52)

Police removed Mr. Galloway's wife from the Lakewood home and Mr. Galloway directed police to the bedroom he shared with his wife. Police found 650 wax folds of heroin, a handgun magazine, and $6,000. (1T70-11 to 74-16)

D. The Trial Court Denies Mr. Galloway's Motion to Suppress

After being charged, Mr. Galloway moved to suppress the fruits of the car and home searches. Defense counsel argued that the results of the car search should be excluded because the warrant did not authorize the TRPD to seize and search the car outside the territorial limits of Toms River. (Da 126-130; 1T104-18 to 105-25) Indeed, "[t]he police knew the search warrant was ineffectual outside of Toms River," but nevertheless failed to extend the warrant to Lakewood by following the required procedure for judicial cross-assignment set out in State v. Broom-Smith, 201 N.J. 229 (2010). (Da 129) Additionally, counsel contended that the consent to search his home was invalid. (Da 130, 145-146)

After hearing testimony from Officer Taranto (1T4-6 to 95-17), the court denied Mr. Galloway's motion (2T4-4 to 19-14; Da 65). Concerning the car search, Judge Gizinski reasoned that the Toms River "officers acted within the scope of the search warrant," in part because the "warrant was not limited to execution in the Township of Toms River." (2T14-2 to 17-7) That is, the search of Mr. Galloway's car "is unlike a scenario in which officers sought to execute a search warrant upon a residence" because "[a] vehicle is inherently mobile and, thus, the territorial limitations the search of a residence presents are not present here." (2T16-15 to 23) In any event, the trial court held it would "not

suppress evidence based on the fractional geographical differences between townships in the same county." (2T17-1 to 3). The trial court also held that, because the "execution of the search warrant was constitutional," it did not poison Mr. Galloway's subsequent consent to search his home. (2T18-6 to 11)

Turning to the search of Mr. Galloway's home, the court held that Mr. Galloway voluntarily consented. (2T18-6 to 19-12) The court explained that it "observed the interaction on [the] MVR recording" and that "[n]othing about the interaction demonstrated that officers acted inappropriately or inappropriately coerced Defendant into signing the consent form." (2T19-4 to 12) In short, the court recounted, officers "stated that if he consented to a search, they would permit him to show them where he stored the CDS rather than perform a more comprehensive search that would result from a warrant." (2T18-6 to 18-20) Judge Ryan later denied Mr. Galloway's pro se motion for reconsideration for substantially the same reasons (Da 87-101).

LEGAL ARGUMENT

POINT I

THE TOMS RIVER POLICE OFFICERS VIOLATED THE SCOPE OF THE SEARCH WARRANT BECAUSE ITS TEXT SPECIFICALLY LIMITED ITS EXECUTION TO THE CAR WHILE IT WAS IN TOMS RIVER—NOT LAKEWOOD. U.S. CONST. AMEND. IV; N.J. CONST. ART. I, ¶ 7. (2T12-4 to 17-7; Da 65)

The scope of the warrant in this case was as clear as it was narrow: a search was authorized on a specific Jaguar S-Type car "within the TOWNSHIP OF TOMS RIVER[.]" (Dca 8-9) That circumscribed scope mirrored Officer Taranto's supporting affidavit, which purported to offer probable cause that Mr. Galloway was selling drugs in Toms River. Judge Gluck had no occasion to consider whether there was probable cause to search Mr. Galloway's car while it was traveling in Lakewood. Nor is it clear the court would have found any, as there was no evidence in the supporting affidavit that Mr. Galloway used his car to transport contraband in Lakewood. And yet, TRPD officers executed the warrant on Mr. Galloway's car while it was traveling in Lakewood. Because the officers violated the warrant's scope, suppression is required.

Appellate review of a suppression motion is governed by two distinct standards. An appellate court will uphold a motion court's factual findings if

they "are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quotation omitted). Factual findings must be rejected if they are "clearly mistaken or so wide of the mark that the interests of justice." State v. Elders, 192 N.J. 224, 245 (2007) (quotations omitted). However, a suppression court's legal findings are afforded no deference, with the appellate court charged with de novo review. State v. Hinton, 216 N.J. 211, 228 (2013) (citation omitted).

The Fourth Amendment to the Federal Constitution and Article I, Paragraph 7 of the State Constitution both protect individuals' rights "to be secure in their persons, houses, papers, and effects" by requiring that search warrants be "supported by oath or affirmation" and "particularly describ[e] the place to be searched and the papers and things to be seized." U.S. Const. amend. IV; accord N.J. Const. art. I, ¶ 7.

Once a warrant has been issued, "[i]t is well settled that officers . . . are authorized . . . to search only those places, appropriate in light of the scope of the warrant." Rockford, 213 N.J. at 441 (quotation omitted). That is, a search "is limited by the terms of its authorization." Walter v. United States, 447 U.S. 649, 656 (1980). And "[i]f the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional

without more." Horton v. California, 496 U.S. 128, 140 (1990); see United States v. Heldt, 668 F.2d 1238, 1262 (D.C. Cir. 1981) ("The authority to search granted by any warrant is limited to the specific places described in it and does not extend to additional or different places."). In the end, "[t]he terms of the warrant must be strictly respected." Rockford, 213 N.J. at 441.

Here, the warrant's terms were precise: Toms River was the specific location at which probable cause arose and the jurisdiction within which the car could be searched. And because the officers violated the explicit terms of the warrant, the fruits of the search must be suppressed.

Officer Taranto's affidavit solely described events that took place in Toms River. His sworn submission describes that he met with the C.I. "at a prearranged location in the Toms River, New Jersey area," who told him "that he/she is familiar with an individual he/she identified as Richard Galloway Jr. who distributes controlled dangerous substances (CDS) in Toms River, New Jersey" and that "Mr. Galloway operates a silver 2002 Jaguar S Type bearing registration [omitted] and utilizes this vehicle to distribute CDS." (Dca 4) Based on this tip, Officer Taranto again met with the C.I. "at a prearranged location in the Toms River, New Jersey area," listened while the C.I. arranged

a controlled buy, and observed Mr. Galloway arrive at the meeting location.[6] (Dca 5) Thus, Officer Taranto wrote, he had "probable cause . . . that in and upon certain vehicles within the Township of Toms River" drugs and other contraband would be found. (Dca 1)

Consistent with the probable cause offering, Judge Gluck issued a narrow two-page warrant with precise language mirroring the affidavit. A search was authorized on a specific Jaguar S-Type car—with designated VIN and license plate numbers—"within the TOWNSHIP OF TOMS RIVER[.]" (Dca 8) This scope makes sense: Judge Gluck had no occasion to consider whether there was probable cause to search Mr. Galloway's car in Lakewood; he only considered evidence that Mr. Galloway used the car to sell drugs in Toms River. (Nor, as discussed in Point II, would Judge Gluck even have the power to authorize a search outside of Toms River.)

Indeed, the probable cause that justified the issuance of the warrant hinged on the presence of the car in Toms River—a circumstance that had occurred in the past and police believed would happen again. In effect, Judge Gluck's authorization functioned like an anticipatory warrant, which permits a search "conditioned on a triggering event that would establish probable cause

[6] Officer Taranto confirmed in his testimony at the suppression hearing that the alleged controlled purchase took place in Toms River. (1T11-11 to 12-11)

to search." Facebook v. State, 254 N.J. 329, 367 (2023) (citation omitted). To authorize such a warrant, a court must find "that, based on facts existing when the warrant is issued, there is probable cause to believe the contraband, which is not yet at the place to be searched, will be there when the warrant is executed." United States v. Golson, 743 F.3d 44, 54 (3d Cir. 2014) (quotations omitted) (cleaned up).

And like an anticipatory warrant, Judge Gluck found that, if Mr. Galloway traveled to Toms River in the Jaguar, then there was probable cause that contraband would be in the car. In other words, the triggering event was the car's presence in Toms River—where Judge Gluck found probable cause that Mr. Galloway was selling drugs. For that reason, TRPD officers intended to wait to execute the search warrant until the car arrived in Toms River. (1T17-10 to 24, 29-5 to 30-18) But that triggering event never happened because the officers got tired of waiting. To allow the TRPD officers to make what was, in effect, their own probable cause determination that the car contained contraband in Lakewood would turn on its head the axiom that "the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent." Johnson v. United States, 333 U.S. 10, 14 (1948).

Because police acted outside the scope of the warrant, the TRPD officers' decision to conduct the search in Lakewood was unreasonable. Thus, suppression is required for the contraband recovered in the car. State v. Smith, 212 N.J. 365, 388 (2012) ("The general remedy for police seizure of evidence in disregard of the warrant requirement is suppression of the evidence obtained improperly." (citation omitted)). Mr. Galloway's purported consent to the search of his home was also the direct result of the police's unlawful execution of the search warrant and the discovery of contraband in the car. So the fruits of that search must also be suppressed. See State v. Smith, 155 N.J. 83, 100-01 (1998); State v. Atwood, 232 N.J. 433, 449 (2018); State v. Rodriguez, 172 N.J. 117, 132 (2002).

In sum, the scope of the search warrant was clear: probable cause existed that drugs and other contraband would be in the car while it was traveling in Toms River. And the court had no occasion to consider whether there was probable cause to search the car in Lakewood. Because the TRPD officers failed to respect the bounds of the warrant, suppression is required.

POINT II

THE SEARCHES OF MR. GALLOWAY'S CAR AND HOME WERE INVALID BECAUSE BOTH TOOK PLACE OUTSIDE THE JURISDICTION OF THE TOMS RIVER MUNICIPAL COURT AND THE TOMS RIVER POLICE OFFICERS. U.S. CONST. AMEND. IV; N.J. CONST. ART. I, ¶ 7. (2T12-4 to 17-7; Da 65)

There is no dispute about the geographical facts in this case: (1) Toms River police officers secured a warrant from Judge Gluck in the Toms River Municipal Court to search Mr. Galloway's car in Toms River; and (2) on August 7, 2020, the Toms River officers stopped Mr. Galloway's car, arrested him, and executed the search warrant in Lakewood. Then, (3) the officers searched Mr. Galloway's Lakewood home.

Nor can there be any real debate that these actions violated clear jurisdictional limits: (1) the reach of Judge Gluck's search warrant was limited to the territorial borders of Toms River, N.J.S.A. 2B:12-16(a); N.J.S.A. 2B:12-19(a); R. 3:5-1; and (2) TRPD officers were prohibited from executing searches outside of Toms River, N.J.S.A. 40A:14-152. Importantly, "jurisdiction is a legal issue" that must be reviewed de novo. State v. Tri-Way Kars, Inc., 402 N.J. Super. 215, 221 (App. Div. 2008) (citation omitted). And because searches executed outside the territorial jurisdiction of the authorizing

judge or executing police officer are void, the extraterritorial actions in this case violated Mr. Galloway's constitutional rights and suppression is required.

As to Judge Gluck's issuing the search warrant, "[a] search based upon a warrant is presumed to be valid once the State establishes that the search warrant was issued in accordance with the procedures prescribed by the rules governing search warrants." State v. Robinson, 200 N.J. 1, 7-8 (2009) (quotation omitted). But evidence obtained under color of a defective warrant must be suppressed. State v. Dispoto, 189 N.J. 108, 121 (2007).

Well-settled state law requires that the judicial officer who issues a search warrant "must be acting within the scope of his or her authority, usually defined in territorial terms." Kevin G. Byrnes, N.J. Arrest, Search & Seizure § 8:4 at 191 (2023) ("The jurisdiction of the issuing court generally defines the scope of the geographical area in which a search may be authorized."). The Superior Court is a constitutional creation empowered to authorize searches throughout the State. N.J. Const. art. VI, § 3, ¶ 2; accord R. 3:1-2. But municipal courts are created by the Legislature with much more limited authority—they are, by their nature, statutory courts of limited jurisdiction both in subject-matter and geography. N.J. Const. art. VI, § I, ¶ 1; State v. Garcia, 297 N.J. Super. 108, 113 (App. Div. 1996) (noting that a municipal court's authority "must be found in legislative grants of jurisdiction").

As to its territorial coverage, "[a] municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality[.]" N.J.S.A. 2B:12-16(a)[7]; N.J.S.A. 2B:12-19(a) ("A municipal court has authority to conduct proceedings in a criminal case within its territorial jurisdiction prior to indictment subject to the Rules of Court."); see N.J.S.A. 2B:12-17(g) (empowering municipal courts to hear "cases within the territorial jurisdiction of the court" for which "jurisdiction is granted by statute"). That is, the Legislature made a deliberate choice that a municipal court's authority is bounded by its territorial jurisdiction.[8] For that reason, R. 3:5-1 recognizes that "[a] search warrant may be issued by a judge of a court having jurisdiction in the municipality where the property sought is located." So Judge Gluck's warrant was necessarily limited to Toms River.

In fact, the Legislature requires a special process before a municipal judge may issue a warrant that extends beyond their municipality. First, a

[7] N.J.S.A. 2B:12-16(a) exempts charges brought under N.J.S.A. 27:25-5.15 from this strict jurisdictional limit, allowing municipal judges to adjudicate certain offenses taking place on public transportation if the conveyance has traveled through the municipality—e.g., fare evasion, N.J.S.A. 27:25-5.8.

[8] There is one narrow exception to this general prohibition: N.J.S.A. 2C:25-28(j) provides that municipal judges may authorize a statewide search warrant to recover weapons in a domestic violence matter. That it was necessary for the Legislature to draw this narrow exception further demonstrates that municipal search warrants otherwise have strict jurisdictional boundaries.

standing order must be issued which appoints the judge to serve as an acting judge in another municipal court. N.J.S.A 12-16(b); N.J.S.A. 2B:12-6; R. 7:7-11(a). And even after being appointed, the acting judge can only consider matters from a neighboring jurisdiction "[i]n the event of the disqualification or inability for any reason of a judge to hear any pending matter[.]" R. 1:12-3(a); see Broom-Smith, 201 N.J. at 235-36 (requiring that officers first "attempt to contact the judge of the territorially-appropriate court" because "that judge's disqualification or inability to hear the case that will trigger the cross-assignment order"). Yet, in this case, Officer Taranto testified that he did not even consider seeking a warrant from the Lakewood municipal court. (1T13-16 to 24, 29-21 to 24)

Thus, the moment TRPD officers executed Judge Gluck's warrant outside Toms River, the warrant itself was invalid. Indeed, New Jersey has a strong tradition of invalidating extraterritorial search warrants. In State v. Bell, 166 N.J. Super. 143 (App. Div. 1979), the Appellate Division held that a search warrant issued for premises located in Union Beach by an Aberdeen Township municipal judge was "outside the territorial jurisdiction and exceed[ed] the authority of the issuing judge and, as such, [was] illegal and void." Id. at 144 ("In effect, no warrant issued and the search of the premises constituted a warrantless search."). The same was true in Eleuteri v. Richman, 26 N.J. 506

(1958), when State Police applied to a magistrate in the Chesterfield Township Municipal Court seeking search warrants for a building in Mansfield Township. Id. at 507. Although the Court had not yet adopted the exclusionary rule and therefore did not order suppression, the Court agreed with the State's concession that "the magistrate was without authority to issue a warrant for a search beyond the territorial jurisdiction of his court[.]" Id. at 508. So, the Court concluded, the "illegality [of the warrant] is clear." Id. at 509.

There is an equally strong requirement that municipal police officers shall not effectuate arrests or execute searches outside their own territorial jurisdiction. The governing statute provides that municipal officers possess the narrow authority to act within their municipality's bounds—but not beyond it:

> The members and officers of a police department and force, within the territorial limits of the municipality, shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace. Said members and officers shall have the power to serve and execute process issuing out of the courts having local criminal jurisdiction in the municipality and shall have the powers of a constable in all matters other than in civil causes arising in such courts.
>
> [N.J.S.A. 40A:14-152 (emphases added).][9]

[9] There exists one commonsense exception to municipal police officers' strict jurisdictional limit: N.J.S.A. 2A:156-1 permits police to cross municipal boundaries to arrest when they are in "fresh pursuit" of a fleeing suspect. But far from pursuing an absconder, TRPD officers surveilled and followed Mr.

Accord State v. Cohen, 73 N.J. 331, 342 (1977) ("[P]olice officers can normally exercise the powers inhering in their office only within the confines of the jurisdiction which employs them." (citing N.J.S.A. 40A:14-152)); State v. Goines, 456 N.J. Super. 436, 440 (Law. Div. 2017) ("[A]bsent legislative or other legal authority, if a police officer arrests someone outside the officer's home jurisdiction, the arrest is illegal. In addition, evidence arising from the arrest will be suppressed." (citations omitted)); State v. Williams, 136 N.J. Super. 544, 548 (Law. Div. 1975) (same). Here, the TRPD officers plainly violated their jurisdictional limitation when—in Lakewood—they stopped Mr. Galloway, arrested him, executed the search warrant on his car, and then searched his home.

Two conclusions are therefore indisputable: (1) Judge Gluck's search warrant was only executable within Toms River; and (2) TRPD officers had no authority to stop Mr. Galloway, to effectuate his arrest, to execute the search warrant, or to perform the home search in Lakewood. The only question remaining is the appropriate remedy for these jurisdictional violations. A review of the relevant constitutional legal principles provides a clear answer: suppression is required because a search performed outside the territorial

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Galloway in Lakewood for over an hour, hoping that he would eventually drive into Toms River. (1T37-16 to 21)

jurisdiction of either the authorizing judge or executing law enforcement officer violates the Federal and State Constitutions.

The United States Supreme Court has prescribed that the Fourth Amendment "must provide at a minimum the degree of protection it afforded when it was adopted." United States v. Jones, 565 U.S. 400, 411 (2012). Thus, the bounds of the Amendment's protections are "guided by the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing[.]" Atwater v. City of Lago Vista, 532 U.S. 318, 326 (2001) (quotation omitted). And at the Nation's founding, it was understood that a search warrant was unconstitutionally void if executed outside the territorial jurisdiction of either the authorizing judge or executing law enforcement officer. That is, a breach of either geographical limit resulted in a constitutional violation and voided the warrant. A trio of federal courts of appeals decisions recently detailed this legal history. United States v. Henderson, 906 F.3d 1109, 1116-17 (9th Cir. 2018); United States v. Krueger, 809 F.3d 1109, 1123-26 (10th Cir. 2015) (Gorsuch, J., concurring); Engleman v. Murray, 546 F.3d 944, 948-49 (8th Cir. 2008).

As for judges, the courts recounted, "[t]he principle animating the common law at the time of the Fourth Amendment's framing was clear: a warrant may travel only so far as the power of its issuing official." Krueger,

809 F.3d at 1123-24 (Gorsuch, J., concurring) ("[W]arrants issued by justices of the peace—county officials empowered to act only within their respective counties—were executable only within those same limited bounds." (citations omitted)). For example, Sir Matthew Hale "wrote that a warrant is valid only 'within the jurisdiction of the justice granting or backing the same.'" Henderson, 906 F.3d at 1116 (quoting 2 Matthew Hale, Historia Placitorum Coronae 110 n.6 (1736)); accord Engleman, 546 F.3d at 948 ("At the time the Bill of Rights was adopted, a warrant issued in one English county was not valid in another county unless a justice of the peace in that county 'backed' the warrant."). As well, "Thomas Cooley later recognized the same principle in his canonical treatise on American constitutional law: in order for a reasonable search or seizure to be made, 'a warrant must issue; and this implies . . . a court or magistrate empowered by the law to grant it.'" Henderson, 906 F.3d at 1116 (quoting Thomas M. Cooley, The General Principles of Constitutional Law in the United States of America 210 (1880)).

A parallel doctrine governed law enforcement officers: "At the time of the framing, it was understood that 'when a warrant is received by an officer, he is bound to execute it,' only 'so far as the jurisdiction of the magistrate and himself extends.'" Henderson, 906 F.3d at 1116 (quoting 4 William Blackstone, Commentaries 291) (cleaned up). Indeed, "'acts done beyond, or

without jurisdiction,' according to Blackstone, 'are utter nullities.'" Id. (quoting Samuel Warren, Blackstone's Commentaries, Systematically Abridged and Adapted 542 (2d ed. 1856)) (cleaned up). Likewise, there existed an "historical prohibition on executing an arrest warrant outside of the arresting officer's jurisdiction." Engleman, 546 F.3d at 949.

Reviewing these legal traditions, the Court of Appeals for the Eighth Circuit summarized that, "[u]nder a historical understanding of the Fourth Amendment, the jurisdiction of the issuing judge and the executing officer is limited, and a warrant is not valid if an officer acts outside of that limited jurisdiction." Id. at 948 (collecting historical cases); accord Henderson, 906 F.3d at 1116-17; Krueger, 809 F.3d at 1123-26 (Gorsuch, J., concurring). Yet that circumstance is exactly what happened here: TRPD officers—whose jurisdiction was limited to Toms River—took a search warrant authorized by Judge Gluck—whose jurisdiction was also limited to Toms River—and executed it in Lakewood. Then, the officers searched Mr. Galloway's Lakewood home.

To be sure, over 25 years ago, the Appellate Division held in State v. Gadsden, 303 N.J. Super. 491 (App. Div. 1997), that a violation of N.J.S.A. 40A:14-152's jurisdictional limitation by a municipal police officer was only "of a procedural or technical nature, and did not rise to the level of a violation

of any of [the defendant's] constitutional rights." Id. at 503; accord State v. Hai Kim Nguyen, 419 N.J. Super. 413, 428-29 (App. Div. 2011) (citing Gadsden); see R. 3:5-7(g) (technical insufficiency or irregularity in a warrant, the procedures to obtain it, or in its execution does not invalidate warrant).

But over two decades later, it is now unmistakable that violations of jurisdictional mandates—including those raised by the facts of this case—infringe on rights guaranteed by the Fourth Amendment and Article I, Paragraph 7. That is to say, if a search performed by federal law enforcement officers outside the territorial jurisdiction of either the authorizing judge or executing officers violates the Federal Constitution, the same must be true for state actors under the New Jersey Constitution. Indeed, multiple federal and state courts have thus held that jurisdictional transgressions related to search warrants are not mere "technical" infractions—but instead are fundamental constitutional violations. See, e.g., Henderson, 906 F.3d at 1116-17; United States v. Werdene, 883 F.3d 204, 212-14 (3d Cir. 2018); United States v. Horton, 863 F.3d 1041, 1048-49 (8th Cir. 2017); United States v. Master, 614 F.3d 236, 241 (6th Cir. 2010); States v. Baker, 894 F.2d 1144, 1146-47 (10th Cir. 1990); State v. Frazier, 558 S.W.3d 145, 155-56 (Tenn. 2018); State v. Rupnick, 125 P.3d 541, 551-52 (Kan. 2005); State v. Wilson, 618 N.W.2d 513, 519-20 (S.D. 2000); Commonwealth v. Shelton, 766 S.W.2d 628, 629-30 (Ky.

1989); Crayton v. State, 485 S.W.3d 488, 504-05 (Tex. App. 2016); State v. Dulaney, 997 N.E.2d 560, 568-69 (Ohio Ct. App. 2013); State v. Kirkland, 442 S.E.2d 491, 491-92 (Ga. Ct. App. 1994).

With its central premise washed away by the tide of newly uncovered constitutional history, Gadsden cannot apply. See State v. Townsend, 186 N.J. 473, 488 (2006) (recognizing that the Court "endeavor[s] to harmonize [its] interpretation of the State Constitution with federal law" (quotation omitted)); State v. Harrell, 475 N.J. Super. 545, 564 (App. Div. 2023) (noting that the Appellate Division is "not bound by [its] earlier decisions because [the court] do[es] not sit en banc").

Far from a novel remedy, suppression is consistent with the practice at the Nation's founding. Then-Judge Gorsuch explained that an extraterritorial warrant "was treated as no warrant at all—as ultra vires and void ab initio to use some of the law's favorite Latin phrases—null and void without regard to potential questions of 'harmlessness' (such as, say, whether another judge in the appropriate jurisdiction would have issued the same warrant if asked)." Krueger, 809 F.3d at 1123-26 (Gorsuch, J., concurring). In fact, courts in multiple states have ordered suppression for jurisdictional breaches. See, e.g., Frazier, 558 S.W.3d at 156; Sanchez v. State, 365 S.W.3d 681, 686 (Tex. Crim. App. 2012); Wilson, 618 N.W.2d at 519-20; Shelton, 766 S.W.2d at 629-30;

Rupnick, 125 P.3d at 552; Crayton, 485 S.W.3d at 505; Kirkland, 442 S.E.2d at 491-92; State v. Davidson, 613 P.2d 564, 565-67 (Wash. Ct. App. 1980).

The exclusionary rule is especially apt in this case because, as Officer Taranto testified, TRPD officers understand there to be no consequences for violating jurisdictional limits. (See 1T29-5 to 30-25 ("Yes, we can, but we honestly try, try not to" perform police duties in other towns; "We didn't have an issue with making a stop if it ended up being a little bit into Lakewood" but "we probably would not have stopped the vehicle had he continued north into Lakewood"; the Toms River warrant was "a valid warrant" in Lakewood).

Notwithstanding these violations, the suppression court ruled that it would "not suppress evidence based on the fractional geographical differences between townships in the same county." (2T17-1 to 3). But failing to suppress the fruits of the car and home searches in this case would abrogate the Legislature's carefully crafted jurisdictional scheme. And it would also rubber-stamp future violations of these important rules by allowing municipal police officers to engage in forum-shopping. It is worth noting that requiring municipal officers to abide by the Legislature's jurisdictional rules would not cause an inordinate hardship. The TRPD officers here could have just as easily

applied to the Superior Court for a warrant and coordinated the searches with officers from the Lakewood Police Department or State Police.[10]

In sum, suppression is required because, under the unique circumstances here, Mr. Galloway's rights under the Fourth Amendment and Article I, Paragraph 7 were violated. On one hand, Judge Gluck's Toms River search warrant became invalid the moment it was executed outside Toms River. On the other hand, the TRPD officers violated their own territorial jurisdiction by arresting Mr. Galloway and executing the warrant and purported consent search in Lakewood. Because these errors resulted in a violation of Mr. Galloway's constitutional rights, suppression of the evidence from Mr. Galloway's car and Lakewood home is required.[11]

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[10] Many municipal court judges have not been empowered to issue search warrants at all. "[A]ssignment judges in only about half the counties in the state have authorized municipal court judges to issue search warrants." 32 N.J. Crim. Prac. & Proc. § 59:20 (2023 ed.). "In those counties where municipal court judges have not been administratively authorized, all the search warrants are issued by Superior [C]ourt judges." Ibid.

[11] Again, because Mr. Galloway's purported consent to the search of his home arose from the unconstitutional execution of the search warrant, the fruits of that search must be suppressed too. Smith, 155 N.J. at 100-01; Atwood, 232 N.J. at 449; Rodriguez, 172 N.J. at 132.

POINT III

MR. GALLOWAY DID NOT VOLUNTARILY CONSENT TO THE SEARCH OF HIS HOME BECAUSE POLICE GAINED HIS SUBMISSION ONLY AFTER OFFICERS (1) THREATENED TO "TEAR THROUGH THE HOUSE" IF HE DID NOT SIGN THE CONSENT TO SEARCH FORM; (2) ASSERTED THAT A SEARCH OF HIS HOME WAS INEVITABLE IRRESPECTIVE OF HIS CONSENT; AND (3) INDICATED THAT THE POLICE—NOT THE COURT—WOULD DECIDE THAT A WARRANT WOULD ISSUE. U.S. CONST. AMEND. IV; N.J. CONST. ART. I, ¶ 7. (2T17-8 to 19-14; Da 65)

Moments after the TRPD officers stopped and searched Mr. Galloway's car, they made clear what would happen next: "We're going back to the house." (Da 17) Mr. Galloway—who was handcuffed, under arrest, and surrounded by eight police officers—initially expressed concern about consenting to a search because his wife, who was sick with cancer, and his grandchildren were at the home. An officer responded that, "[i]f you're gonna give us consent then . . . we're not going to tear your house apart." (Da 18) Minutes later, after Mr. Galloway again asked about the consequences of declining to consent, officers confirmed what they would do if he did not accede: "We write a search warrant," "make entry into the house," and "we're gonna tear through the house." (Da 25) In addition, officers told Mr. Galloway that a search was inevitable, warning him that "either way we're going back to

the house . . . it's either with your cooperation or without your cooperation." (Da 18) And they suggested that the police department—not the court—would decide ultimately whether a warrant was justified. (Da 18, 25) Because these threats, misstatements of the law, and the surrounding circumstances rendered Mr. Galloway's consent involuntary, the fruits of the home search must be suppressed.

Under the State Constitution, "a warrantless search of a home is presumptively invalid, [and] the State bears the burden of establishing that such a search falls within one of the few well-delineated exceptions to the warrant requirement." State v. Vargas, 213 N.J. 301, 314 (2013) (quotation omitted). Consent is one such exception. But "consent searches under the New Jersey Constitution are afforded a higher level of scrutiny," as the State must demonstrate that "any consent given by an individual to a police officer to conduct a warrantless search [was] given knowingly and voluntarily." State v. Carty, 170 N.J. 632, 639 (2002), modified, 174 N.J. 351 (2002).

Nearly six decades ago, the Supreme Court in State v. King, 44 N.J. 346 (1965), ruled that, to be voluntary, consent must be "unequivocal and specific" and "freely and intelligently given." Id. at 352 (quotations omitted). Moreover, the Court made clear that "[t]he burden of proof is on the State to establish by

clear and positive testimony that the consent was so given." Ibid. Application of these general principles must be done on a case-by-case basis. Ibid.

To guide that case-by-case analysis, the King Court noted that "there have evolved a number of factors which courts have weighed in determining whether acquiescence to a search has been voluntarily given." Ibid. Factors indicating coercion include: (1) consent obtained after arrest; (2) consent obtained despite a denial of guilt; (3) consent obtained after refusing initial requests; (4) the subsequent search resulted in contraband; and (5) consent obtained while handcuffed. Id. at 352-53 (citations omitted).

On the other side of the ledger, King also listed factors tending to indicate voluntariness: (1) the individual thought police would find no contraband; (2) the individual admitted guilt before consent; and (3) the individual affirmatively assisted police. Id. at 353 (citations omitted). Still, the King Court cautioned, "the existence or absence of one or more of the above factors is not determinative" and that consideration depends on "the totality of the particular circumstances of the case[.]" Ibid.

New Jersey courts continue to apply the King factors. E.g., State v. Hagans, 233 N.J. 30, 39-40 (2018). And consistent with that framework, courts have recognized that certain police conduct is inherently coercive. For starters, "account must be taken of subtly coercive police questions, as well as the

possibly vulnerable subjective state of the person who consents." Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973). Courts should also consider that the nature of custody places "inherent psychological pressure on a suspect in custody." State v. P.Z., 152 N.J. 86, 102 (1997). Likewise, an individual under arrest is likely to feel less free to say no to an officer requesting consent to search, just as a suspect in custody is more likely feel "compel[led] to speak where he would not otherwise do so freely." See Miranda v. Arizona, 384 U.S. 436, 467 (1966); accord State v. Bindhammer, 44 N.J. 372, 380 (1965) ("[T]he State has a heavier burden of establishing that . . . consent was given freely, understandingly and unequivocally" while an individual was "in custody."). Finally, consent that is "no more than acquiescence to a claim of lawful authority" is inherently coerced. State v. Dolly, 255 N.J. Super. 278, 285 (App. Div. 1991) (quotation omitted).

Before even getting to the extraordinary threat police used in this case, several King factors already point strongly towards coercion. When officers sought his consent, Mr. Galloway was already handcuffed and under arrest (King factors 1 and 5) (1T46-9 to 12). He also repeatedly expressed hesitation to provide consent (King factor 3). (1T61-14 to 16, 63-17 to 20) And his consent led police to additional contraband. (King factor 4) (1T70-11 to 71-11). On top of all that, when he signed the consent form, at least eight

officers—three in uniform and five in plain clothes—were on scene. (See Da 15 at 3:13:50) On their own, these circumstances already demonstrate a highly coercive environment.

However, the TRPD officers went much further, threatening to damage Mr. Galloway's home—where his ill wife and young grandchildren were staying—if he did not consent to the search. If Mr. Galloway consented, they told him, he would be saved from "heart ache" because the officers would act like a "gentleman." These threats and the surrounding circumstances plainly triggered Mr. Galloway's consent.

As captured on dashcam video (see generally Da 15 at 3:13:00 to 3:26:20) and transcribed by the State (see generally Da 16-27), moments after being removed from his car, handcuffed, and placed under arrest, an officer tells Mr. Galloway "[w]e're going back to the house," and asks, "[w]ho's back in your house right now?" (Da 17) Although Mr. Galloway's responses are mostly inaudible, the following recorded exchange then takes place:

> UNIDENTIFIED OFFICER: Nobody but your wife?
>
> (MR. GALLOWAY inaudible)
>
> UNIDENTIFIED OFFICER: Copy that. Got this cash on you. Okay. Ah, you can go with this . . . Do you want to ah, talk to him about ah, going back?
>
> OFFICER TARANTO: Yeah, yeah. So, so here's the deal. It's just your wife at the house right now?

(MR. GALLOWAY inaudible)

OFFICER TARANTO: And your granddaughter? Okay. Listen here's the deal. Right now we have enough to write a search warrant on your house and we're well within that means, so either we're gonna go that route or we can be a gentleman and we can go back, and you can give us consent and we can find whatever else you've got in there.

UNIDENTIFIED OFFICER: Either, either way we're going back to the house . . .

UNIDENTIFIED OFFICER: Yeah.

UNIDENTIFIED OFFICER: . . . it's either with your cooperation or without your cooperation.

MR. GALLOWAY: I understand that.

UNIDENTIFIED OFFICER: Okay.

MR. GALLOWAY: I'm not gonna argue with you.

UNIDENTIFIED OFFICER: Alright.

(MR. GALLOWAY inaudible)

OFFICER TARANTO: If you're gonna give us consent then yeah, we'll, we'll be, you just tell us where everything is, we're not going to tear your house apart. Okay? We're cool with that?

(MR. GALLOWAY inaudible)

[Da 17-18 (emphases added).]

Moments later, an officer implores Mr. Galloway that "[c]ooperation goes a long way my man[.]" (Da 19) And Officer Taranto then says that "we're gonna do the consent here so when we get over there we're not disturbing your wife any more than we have to. Okay?" (Da 19)

Shortly after, Officer Taranto began reading aloud the Consent to Search Form. (Da 24) But Mr. Galloway quickly stopped him and, although much of what he says is not captured on audio, the dashcam video shows Mr. Galloway speaking uninterrupted to Officer Taranto for nearly 40 seconds.[12] (Da 15 at 3:22:20 to 3:23:35; see Da 24) Officer Taranto testified that, during this discussion, Mr. Galloway expressed additional concern that the search would upset his wife, who was sick with cancer at the home: "Galloway was asking us about how we would conduct our search with respect to his wife and other people that might be at the residence." (1T61-11 to 62-8, 84-14 to 86-9) According to Officer Taranto, "at that point [Mr. Galloway] was thinking about consent or what if he decided not to grant consent and we were in the process of informing him that we would at that point apply for a search warrant." (1T63-17 to 20 (emphasis added))

[12] In the only audible portion of Mr. Galloway's prolonged statement, he implores the officers that "I just want you to be respectful." (Da 24)

Continuing the emphasize the consequences of withholding consent, Officer Taranto gestured to the other officers on the scene, and explained to Mr. Galloway that, if he consented, "we can keep these guys out, a couple guys got to come in with me just because we're going in to [sic] a place that we don't know. We'll, we'll, we'll be respectful. I promise. I mean it's my, as a man I'm giving you my word. Okay?" (Da 25; see 1T72-10 to 15 (Officer Taranto testifying that "[Galloway] was concerned about causing any hardship to his wife. And we had told him that if you tell us where the items are, you know, we're going to go in there, we're going to be respectful, we're not going to try to make a big scene of this, and you know, we, we did.")

Officer Taranto then read out loud the entire Consent to Search Form. (Da 25) Although what Mr. Galloway says next is mostly inaudible, the officers' audible responses make clear that Mr. Galloway again asked for clarification about what would happen if he did not consent:

> (MR. GALLOWAY inaudible)
>
> OFFICER TARANTO: Okay.
>
> (MR. GALLOWAY inaudible)
>
> OFFICER TARANTO: What do you mean?
>
> UNIDENTIFIED OFFICER: We won't be searching it on consent.

> OFFICER MACRAE[13]: We're not gonna search it on the consent. We'd wind up going back to our headquarters to write a search warrant, we'll come back. And make entry into the house. So basically you're saving us some time here and you're saving yourself a little bit of heart ache. We write a search warrant, we're gonna tear through the house. You know what I mean?
>
> MR. GALLOWAY: You guys did that one time . . . .
>
> [Da 25 (emphasis added); see 2T84-8 to 86-9.]

Only at that point, after the threat that police would tear apart his home—which he shared with his ill wife and grandchildren—did Mr. Galloway sign the consent to search form. Even then, Mr. Galloway asked officers to call his wife as a courtesy so that she wouldn't be upset when the police arrived; the police declined to do so. (Da 26-27)

The officers' conduct was plainly coercive. Simply put, Mr. Galloway was left with a Hobson's choice: either consent to the search or have his home destroyed, further upsetting his ill wife and grandchildren in the process. Commonsense dictates that, given this dire binary, Mr. Galloway was compelled to accede and his consent was thus involuntary. See Carty, 170 N.J. at 645 ("'Consent' that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they

[13] Officer Taranto testified that TRPD Detective Macrae (no first name given) made this statement. (1T65-17 to 21)

are coerced to comply with a request that they would prefer to refuse." (quotation omitted)); State v. Carvajal, 202 N.J. 214, 226 (2010) ("To act voluntarily is to act with a free and unconstrained will, a will that is not overborne by physical or psychological duress or coercion.").

On top of the threats, officers repeatedly told Mr. Galloway that a search of his home was inevitable. (Da 17 ("We're going back to the house. Who's back in your house right now?"); Da 18 ("Either way we're going back to the house . . . it's either with your cooperation or without your cooperation.")); see Hornberger v. ABC, Inc., 351 N.J. Super. 577, 600 (App. Div. 2002) ("Once a search has begun, there is no effective right to refuse. Therefore, consent given after the search has begun is neither voluntary nor meaningful.")

Even more, police twice indicated to Mr. Galloway—a legal layperson—that the TRPD would ultimately decide whether a warrant would issue—not the court. (See Da 18 ("Right now we have enough to write a search warrant on your house and we're well within our means[.]"), Da 25 (Without consent, "[w]e'd wind up going back to our headquarters to write a search warrant, we'll come back. And make entry into the house.")) Although an officer later attempted to walk-back this misstatement of the law, stating that "[w]e're gonna petition the court for a search warrant" (Da 26), the earlier assertions necessarily clouded Mr. Galloway's understanding of his right to refuse

consent. See Bumper v. North Carolina, 391 U.S. 543, 550 (1968) ("When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent."); Hagans, 233 N.J. at 42 ("As a best practice, police officers should tell a suspect only the measures they intend to take—apply for a search warrant—and should not offer a prediction about whether a warrant will issue.").[14]

In finding Mr. Galloway's consent voluntary, the trial court explained that it "observed the interaction on [the] MVR recording" and that "[n]othing about the interaction demonstrated that officers acted inappropriately or inappropriately coerced Defendant into signing the consent form." (2T19-4 to 12) But this conclusion is untenable given the circumstances. Indeed, if officers fulfilled their threat to "tear through the house," they would have been acting contrary to the constitutional prohibition on damaging property. See Gurski v. New Jersey State Police, 242 N.J. Super. 148, 161 (App. Div. 1990)

[14] Despite the officers' definitive-sounding statements, it is far from certain that a court would have found probable cause (or even reasonable suspicion, as discussed in Point IV below) to search Mr. Galloway's home. See Hagans, 233 N.J. at 42 (distinguishing a "comment regarding the inevitability of a search warrant" that is "a fair prediction of events that would follow" from "a deceptive threat made to deprive an individual of the ability to make an informed consent." (quotations omitted) (cleaned up)).

("No police officer in the course of executing a warrant can or should, without justification, for sufficient reason, destroy private property[.]"); United States v. Ramirez, 523 U.S. 65, 71 (1998) ("[E]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment[.]").

The consequences of the coercive conduct were all the more grave because police sought to search Mr. Galloway's home—which is given "special status" by "our federal and state constitutional schemes[.]" State v. Johnson, 193 N.J. 528, 553 (2008) (quotation omitted). Indeed, "unlawful, warrantless searches and seizures within the home are the chief evil against which the wording of the Fourth Amendment is directed." Ibid.; accord Florida v. Jardines, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals.").

Because the TRPD officers leveraged the combination of Mr. Galloway's inherently coercive post-arrest environment, his difficult family situation, threats to "tear through the house" if he failed to acquiesce, and warnings that a search was inevitable, Mr. Galloway's purported consent was involuntary. For these reasons, the fruits of the home search must be suppressed.

POINT IV

POLICE AT THE ROADSIDE CAR STOP LACKED AN OBJECTIVELY REASONABLE AND ARTICULABLE BASIS TO SEEK MR. GALLOWAY'S CONSENT TO SEARCH HIS HOME. N.J. CONST. ART. I, ¶ 7. (Not Raised Below)

As described in Point III, unsatisfied with just the search of Mr. Galloway's car, police embarked on a fishing expedition and sought Mr. Galloway's consent to search his home. But the officers had no objectively reasonable and articulable information linking the contraband found in Mr. Galloway's car to his home. Thus, they were prohibited from asking for his consent, and the fruits from the home search must be suppressed.

In Carty, 170 N.J. at 635, the Supreme Court held that police cannot seek consent to search a stopped car without reasonable and articulable suspicion that a search of the car will yield evidence of a crime. This "prophylactic" measure, the Court explained, is intended to stop police from converting a roadside encounter into a "fishing expedition for criminal activity unrelated to the stop." Id. at 635, 647. It also recognizes that, "[i]n the context of motor vehicle stops, where the individual is at the side of the road and confronted by a uniformed officer seeking to search his or her vehicle, it is not a stretch of the imagination to assume that the individual feels compelled to consent." Id. at 644.

Four years later, in State v. Birkenmeier, 185 N.J. 552 (2006), the Court assumed, without deciding, "that the requirements of State v. Carty" also "apply to a request for consent to search something other than a motor vehicle addressed to a party in custody" after a roadside car stop. Id. at 564 n.3. This Court should apply that standard here, and require that, before asking Mr. Galloway for consent to search his home, the officers possessed reasonable suspicion that contraband would be found there. To hold otherwise would create an illogical standard: officers conducting a car stop would be barred under Carty from seeking the driver's consent for a suspicionless search of his car, but could still push for consent to a suspicionless search of his home.[15]

In this case, nothing before, during, or after the car stop provided officers a reasonable and articulable basis to suspect that Mr. Galloway would have contraband in his home. Before the car search, Officer Taranto's search warrant affidavit made clear that police were focused on Mr. Galloway's car—not his home. (See Dca 1-7) Officer Taranto testified that, before the car

[15] As courts have recognized, requests to search are plagued by power imbalances and discriminatory implementation. See Carty, 170 N.J. at 645 (citing data that "nearly ninety-five percent of detained motorists granted a law enforcement officer's request for consent to search"); Matthew B. Ross, PhD, New Jersey State Police Traffic Stops Analysis, 2009-21 (July 7, 2023) at 7, https://www.nj.gov/oag/newsreleases23/2023-0711_NJSP_Traffic_Stop_Analysis.pdf (concluding that recent car stop data "suggests that the New Jersey State Police apply a lower threshold for searching minority occupants which is indicative of potential discrimination").

search, police were "not seeking a search warrant for—at this time for Mr. Galloway's residence" because "our probable cause had occurred in Toms River." (1T13-16 to 24, 29-21 to 30-10, 51-16 to 18)

And even after the car search uncovered contraband, police had nothing linking those items to Mr. Galloway's home. When asked why he ultimately sought consent, Officer Taranto said it was "[b]ecause we believed there to be other items of evidentiary value located back at his residence, be it money, drugs, more weapons." (1T51-2 to 9) The best Officer Taranto could muster in support of that speculation was that Mr. Galloway departed his home earlier that day, before making three separate stops in the car. (Ibid.) But there was no indication that police observed Mr. Galloway take items from his house and place them in his car. Nor was there any suggestion that criminal associates were at the house; when asked, Mr. Galloway told officers that only his ill wife and his grandchildren were at the home.

Officer Taranto's "hunch" alone did not provide objective support for a reasonable and articulable suspicion that Mr. Galloway's home contained contraband. See State v. Nyema, 249 N.J. 509, 527 (2022) ("Although reasonable suspicion is a less demanding standard than probable cause, neither inarticulate hunches nor an arresting officer's subjective good faith can justify infringement of a citizen's constitutionally guaranteed rights." (quotations

omitted) (cleaned up)); id. at 535 (explaining that "a hunch" "is not the standard" for "objectively reasonable and articulable suspicion"). For that reason, Mr. Galloway's consent was invalid and the fruits of the home search must be suppressed.

CONCLUSION

For the reasons stated above, the hearing court's order denying Mr. Galloway's suppression motion should be reversed.

Respectfully submitted,

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Attorney for Defendant-Appellant

BY: */s/ Ethan Kisch*

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Dated: December 20, 2023

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-3339-22T4

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division,
v.	:	Monmouth County.
RICKY A. GALLOWAY,	:	Sat Below: Hon. Rochelle Gizinski, J.S.C.
Defendant-Appellant.	:	Hon. Kenneth T. Palmer, J.S.C. Hon. Guy P. Ryan, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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May 10, 2024

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5T refers to the transcript dated March 28, 2023.
6T refers to the sentencing transcript dated June 2, 2023.

COUNTERSTATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

On September 8, 2022, an Ocean County grand jury returned Superseding Indictment No. 22-09-1636,[2] charging defendant, Ricky A. Galloway, with the following offenses: third-degree possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10(a)(1) (Count One); third-degree possession with intent to distribute CDS, contrary to N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(5) (Count Two); third-degree possession of CDS, contrary to N.J.S.A. 2C:35-10(a)(1) (Count Three); second-degree possession with intent to distribute CDS, contrary to N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(2) (Count Four); third-degree possession of CDS, contrary to N.J.S.A. 2C:35-10(a)(1) (Count Five); third-degree possession with intent to distribute CDS, contrary to N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(5) (Count Six); third-degree possession of CDS, contrary to N.J.S.A. 2C:35-10(a)(1) (Count Seven); third-degree possession with intent to distribute CDS, contrary to N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3)

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[1] The State has combined the Counterstatements of Procedural History and Facts because the only discussion detailing defendant's underlying crime is that which was elicited from defendant in his factual basis at the plea hearing.

[2] This indictment superseded the original Indictment No. 21-07-871, which had been filed on July 7, 2021. (Da1 to 7).

(Count Eight); second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(b)(1) (Count Nine); fourth-degree possession of large-capacity ammunition magazine, contrary to N.J.S.A. 2C:39-3(j) (Count Ten); fourth-degree possession of large-capacity ammunition magazine, contrary to N.J.S.A. 2C:39-3(j) (Count Eleven); second-degree possession of a firearm while engaged in certain drug activity, contrary to N.J.S.A. 2C:39-4.1(a) (Count Twelve); and, second-degree certain persons not to possess firearm, contrary to N.J.S.A. 2C:39-7(b)(1) (Count Thirteen). (Da8 to 14).

On June 30, 2022, the Honorable Rochelle Gizinski, J.S.C., heard defendant's motion to suppress evidence. (1T). Judge Gizinski denied the motion in an oral opinion on July 28, 2022. (2T; Da65).

On September 21, 2022, the Honorable Kenneth T. Palmer, J.S.C., heard defendant's motion to proceed pro se. (3T). In an oral opinion on September 23, 2022, Judge Palmer granted defendant's motion and appointed standby counsel to assist defendant. (4T9-12 to 10-7).

On March 28, 2023, the Honorable Guy P. Ryan, J.S.C., heard defendant's pro se motion to reconsider Judge Gizinski's earlier decision on the motion to suppress. (5T3-17 to 15-19). Judge Ryan denied the motion in a written opinion issued that same day. (Db87 to 101).

After Judge Ryan denied this and other pro se motions,[3] defendant moved forward with a negotiated plea agreement. (5T27-16 to 22). On March 28, 2023, defendant pleaded guilty to Count Six, third-degree possession with intent to distribute CDS, and Count Thirteen, second-degree certain persons not to possess weapons. (5T31-3 to 10; 5T33-3 to 50-18; Da111 to 114). In exchange, the State agreed to dismiss all remaining counts under Superseding Indictment 22-09-1636, as well as three other cases, and would recommend an aggregate sentence of seven years. (5T31-11 to 25; Da106; 6T17-9 to 21).

At his guilty plea, defendant admitted that when police stopped his vehicle on August 7, 2020, he knowingly had a .40-caliber weapon in his vehicle, despite being prohibited from possessing handguns based on a prior first-degree robbery conviction. (5T43-14 to 45-4). He also admitted to possessing fentanyl that same day, with the intent to share or distribute it illegally. (5T45-8 to 47-9).

On June 2, 2023, Judge Ryan sentenced defendant to the following concurrent terms: on Count Six (possession with intent to distribute CDS), to

[3] Defendant filed several other pro se motions related to his case: a motion to dismiss the indictment; a second motion to suppress; and a motion requesting Judge Ryan to recuse himself from the case. Judge Ryan denied the pro se motions to dismiss the indictment and for recusal; he also dismissed the pro se motion to suppress as moot. (Da66 to 86; Da102; 5T13-13 to 27-15).

seven years imprisonment, and on Count Thirteen (certain persons), to five years imprisonment, with five years of parole ineligibility. (6T16-16 to 23; Da111).

Defendant filed a notice of appeal in this Court on December 20, 2023. (Da115 to 118). This appeal follows.

LEGAL ARGUMENT

POINT I

THE COURT BELOW PROPERLY DENIED THE MOTION TO SUPPRESS BECAUSE THE POLICE LAWFULLY STOPPED AND SEARCHED DEFENDANT'S VEHICLE BASED ON A VALID SEARCH WARRANT.

The search warrant for defendant's vehicle was supported by probable cause and its execution was reasonable. Toms River police officers lawfully executed this warrant when the vehicle was in Lakewood, just over the Toms River border. Given the inherent mobility of a vehicle, and pursuant to their arrest powers, officers reasonably stopped the vehicle before it traveled further into Lakewood and out of sight. The hearing judge properly ruled that the search warrant and its execution were constitutional and did not require application of the exclusionary rule. This Court should affirm the denial of the motion to suppress.

A. The Motion-to-Suppress Facts

The following facts were adduced at the June 30, 2022 hearing on defendant's motion to suppress:

On August 5, 2020, then-Toms River Patrolman Louis A. Taranto, III, submitted an affidavit in support of a motor-vehicle search warrant to the Honorable James J. Gluck, J.M.C., in the Toms River Municipal Court. (1T4-6; 1T7-11 to 21; Dca1 to 7). The affidavit detailed information the police received from a confidential informant (CI) about a controlled purchase of narcotics between the CI and defendant in Toms River.[4] (1T11-6 to 12-5; 1T89-1 to 10; Dca5 to 6). The affidavit stated that defendant lived in Lakewood and that his vehicle was registered in Lakewood. (1T11-13 to 15; Dca6 to 7).

On August 5, 2020, Judge Gluck issued a search warrant for a 2002 Jaguar S-Type motor vehicle, acknowledging Patrolman Taranto's statements that he had

> probable cause to believe that in and upon a certain vehicle within the TOWNSHIP OF TOMS RIVER . . . to wit: NEW JERSEY REGISTRATION: [redacted] and more particularly described as[] a Silver 2002

[4] In the affidavit, the information related to the CI was kept vague and only indicated that the controlled buy occurred at a "prearranged location." (Dca5). At the motion-to-suppress hearing, Taranto testified that the controlled buy took place in Toms River. (1T89-8 to 10).

> Jaguar S Type with a VIN of [redacted], registered [in] Lakewood, NJ . . . [t]here has been and now is located certain property . . . consisting of heroin and other controlled dangerous substances, money, . . . [and] firearms . . . .
>
> [(Dca8; 1T15-7 to 25).]

The warrant authorized a search of "the premises hereinabove named . . . for the property specified . . . and to take into your possession all such specified property which may be found on the said premises . . . ." (Dca8).

On August 7, 2020, Patrolman Taranto and other officers established surveillance of defendant at his residence in Lakewood. (1T8-2 to 12; 1T17-2 to 7). The officers planned to follow defendant's Jaguar and conduct a motor-vehicle stop in Toms River and search the vehicle in accordance with the issued warrant. (1T8-12 to 18).

Beginning at about 1:30 p.m., officers watched and surveilled as defendant left his residence and drove the Jaguar to three separate locations in Lakewood. (1T17-6 to 14; 1T37-16 to 19). At each stop, defendant would interact with an individual from his own vehicle, engaging in what Patrolman Taranto believed was indicative of narcotics-related activity. (1T17-15 to 20).

Officers were positioned on Route 70 in Lakewood near the border of Toms River and Lakewood where they would attempt to stop defendant as he traveled into Toms River. (1T21-6 to 12). Officers watched as defendant took

an exit ramp where he could either turn north and travel further into Lakewood, or turn left, or continue straight and travel into Toms River. (1T29-5 to 10; Da15 3:11:21 to 3:12:39). Based on his earlier observations of defendant's activity at the three stops and the fact that the Jaguar was just over the Toms River border in Lakewood, Patrolman Taranto decided that the police would stop defendant's vehicle. (1T29-13 to 20; 1T38-24 to 39-1).

Toms River Officer H. Farnkopf stopped defendant in a marked police vehicle with video recording capabilities at about 3:10 p.m. (Da15 3:12:39; 1T31-1 to 32-19; 1T37-1). The stop occurred in Lakewood, and several officers, including Patrolman Taranto, arrived at the scene. (1T44-5 to 7; 1T45-19 to 25; Da15 3:12:30 to 3:13:07). Patrolman Taranto read defendant his Miranda rights, and defendant indicated he understood them. (1T46-6 to 8; Da15 3:13:20 to 3:13:34). Defendant was then handcuffed and placed under arrest for CDS charges unrelated to any events that occurred that day. (1T46-7 to 15; Da15 3:13:39 to 3:14:10). Police searched defendant incident-to-arrest and recovered two .40-caliber rounds of ammunition and more than $1,600 in cash. (1T49-1 to 9; Da15 3:14:10 to 3:14:53).

Officers then executed the search warrant on defendant's vehicle. (1T48-16 to 17). The vehicle search uncovered a .40-caliber handgun, 234 wax folds of heroin, and a small quantity of cocaine. (1T48-16 to 24).

Based on the evidence found during these searches, Patrolman Taranto sought defendant's consent to search his residence in Lakewood. (1T50-21 to 51-6; 1T58-24 to 60-16; Da15 3:22:26 to 13:36:00). Defendant consented and signed a consent-to-search form. (1T67-18 to 68-5; Da15 13:36:00 to 13:36:13; Da52). He was placed in a patrol vehicle and taken to his Lakewood home to execute the consent search. (1T69-12 to 15; Da15 13:28:45).

Upon arriving at the residence, defendant directed Taranto and other officers upstairs to his bedroom and pointed out a black bag. (1T70-18 to 23). Inside the bag, police discovered about 650 wax folds of heroin and a .40-caliber handgun magazine, which was the same type recovered from defendant's vehicle earlier that day. (1T70-24 to 71-5). Next to the black bag, officers found $6,000 cash underneath a pile of baseball hats. (1T71-6 to 11).

B. The Rulings on the Motion to Suppress and Motion for Reconsideration

On July 28, 2022, Judge Gizinski denied defendant's motion to suppress based on defects in the warrant, in a thorough opinion on the record. (2T). Judge Gizinski first addressed the search warrant and stop of the Jaguar. (2T12-24 to 25). Specifically, she detailed the exact verbiage in the warrant and supporting affidavit, finding that Patrolman Taranto's affidavit described with particularity the vehicle to be searched and the grounds for probable cause (2T16-1 to 14):

> Further, the search warrant was not limited to execution in the Township of Toms River. The property to be searched as described in the search warrant was a silver 2002 Jaguar S-Type. This is unlike a scenario in which officers sought to execute a search warrant on a residence. A vehicle is inherently mobile and thus, the territorial limitations the search of a residence presents are not present here.
>
> [(2T16-15 to 23).]

Judge Gizinski also considered the fact that had defendant turned a different direction in his vehicle, he would have driven into Toms River instead of remaining in Lakewood. (2T16-24 to 17-3). The judge refused to "suppress evidence based on the fractional geographical differences between townships in the same county." (2T17-1 to 3). Judge Gizinski therefore held that the search warrant and the officers' execution of that search warrant was constitutional. (2T17-4 to 7).

Defendant, pro se, later moved for reconsideration of his motion to suppress under Rule 4:49-2 and Rule 1:7-4. To support his motion, defendant claimed that Patrolman Taranto incorrectly testified that police stopped him in Toms River, when, in fact, they had arrested him in Lakewood. (Da96 to 97). Defendant also stated, for this first time in his motion for reconsideration, that Officer Stallwell had allegedly threatened him into consenting to a search of his residence. (Da97).

Judge Ryan heard the reconsideration motion on March 28, 2023, and

issued a detailed written opinion denying it that same day. (5T3-21 to 15-19; Da87 to 101). In his opinion, Judge Ryan recounted Judge Gizinski's thorough findings in her decision on the motion to suppress. (Da96 to 98). Judge Ryan first found that Judge Gizinski committed no error or oversight that could form the basis for a motion for reconsideration. (Da96). Instead, defendant sought to introduce new evidence to support the motion to suppress and relitigate it, neither of which are appropriate grounds for a motion for reconsideration under Rule 4:49-2. (Da97 to 99). Second, Judge Ryan held that Judge Gizinski made detailed findings of facts in her decision, and further denied defendant's motion for reconsideration under Rule 1:7-4. (Da99 to 100).

C. Toms River police officers properly stopped the Jaguar in Lakewood pursuant to a valid search warrant.

Defendant first argues on appeal that the motor-vehicle search was invalid because the officers violated the scope of the warrant when they stopped defendant in his vehicle in Lakewood, as opposed to Toms River. Second, he contends that both the motor-vehicle search and the search of his home were invalid because Toms River officers conducted those searches outside of their municipal jurisdiction. Defendant is wrong on both fronts. Regardless, even if this Court determines that the officers should not have crossed the Toms River border to conduct these searches, such a technical violation does not result in the exclusion of evidence recovered.

Rule 3:5-1 provides that "[a] search warrant may be issued by a judge of a court having jurisdiction in the municipality where the property sought is located." The issuing judge must review the search-warrant application and be satisfied "that there is probable cause to believe that . . . evidence of a crime is at the place sought to be searched." State v. Boone, 232 N.J. 417, 426 (2017) (quoting State v. Jones, 179 N.J. 377, 388 (2004)). "Probable cause for the issuance of a search warrant requires a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Chippero, 201 N.J. 14, 28 (2009) (internal citations omitted).

"A search executed pursuant to a warrant is presumed to be valid." State v. Hamlett, 449 N.J. Super. 159, 169 (App. Div. 2017) (quoting Jones, 179 N.J. at 388), appeal dismissed as improvidently granted, 233 N.J. 350 (2018). A defendant bears the burden to prove the lack of probable cause supporting the issuance of the warrant or that the resulting search was unreasonable. Ibid. (quoting Jones, 179 N.J. at 388).

The police must act objectively reasonable when executing a warrant. State v. Rockford, 213 N.J. 424, 441 (2013). In other words, a court must consider whether the officers' conduct was "objectively reasonable in light of 'the facts known to the law enforcement officer at the time of the search.'" Ibid. (quoting State v. Handy, 206 N.J. 39, 46-47 (2011) (citations omitted)).

It follows that any officer searching a home, a car, or belongings pursuant to a search warrant is "authorized to use only those investigatory methods, and to search only those places, appropriate in light of the scope of the warrant." Rockford, 213 N.J. at 441 (quoting State v. Reldan, 100 N.J. 187, 195 (1985)).

New Jersey "courts have been reluctant to invalidate search warrants based on confusion over jurisdiction or other issues that do not implicate probable cause or the neutrality of the issuing judge." State v. Broom-Smith, 406 N.J. Super. 228, 238-39 (App. Div. 2009), aff'd, 201 N.J. 229 (2010); see also Hamlett, 449 N.J. Super. at 178. "In other words, so long as the objectives underlying the warrant requirement remain intact, slight departures from strict compliance with the rules will not invalidate a search." Hamlett, 449 N.J. Super. at 176.

The exclusionary rule requires suppression of any evidence recovered during an unreasonable search. State v. Gioe, 401 N.J. Super. 331, 339 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009). The rule is designed to prevent, rather than repair, by removing any incentive by police to disregard a civilian's Fourth Amendment rights. Hamlett, 449 N.J. Super. at 175-76.

Yet "courts do not apply the exclusionary rule indiscriminately." Hamlett, 449 N.J. Super. at 176 (citing Gioe, 401 N.J. Super. at 339). Only evidence obtained in violation of a defendant's constitutional rights will be

excluded. Ibid. (citations excluded). "[S]o long as the objectives underlying the warrant requirement remain intact, slight departures from strict compliance with the rules will not invalidate a search." Ibid. (citing State v. Valencia, 93 N.J. 126, 134 (1983)). "In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution." R. 3:5-7(g).

On appeal from a motion to suppress, an appellate court reviews the record "to determine whether the findings are supported by credible evidence and the legal conclusions are valid." State v. Smith, 374 N.J. Super. 425, 430 (App. Div. 2005). Such findings warrant particular deference when they are "substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Robinson, 200 N.J. 1, 15 (2009). Those "findings should be disturbed only if they are so clearly mistaken that the interests of justice demand intervention and correction." Ibid.

An appellate court therefore affords "substantial deference to the discretionary determination" that resulted in the issuance of a search warrant. Hamlett, 449 N.J. Super. at 169 (quoting State v. Keyes, 184 N.J. 541, 554 (2005)). "Doubt as to the validity of the warrant should ordinarily be resolved

by sustaining the search." Ibid. (quoting Keyes, 184 N.J at 554).

i. The search of defendant's vehicle in Lakewood did not violate the scope of the warrant.[5]

As an initial matter, Judge Gluck, an authorized judicial officer in Toms River, issued a valid search warrant based on probable cause. Defendant has not contested this finding of probable cause. Instead, he challenges the location of the vehicle during the search.

Critically, here, the warrant-based search was limited to the property described in the warrant, namely, the Jaguar that defendant was driving on August 5, 2020. Specifically, the warrant indicated that Patrolman Taranto had probable cause to believe that a "certain vehicle within the Township of Toms River" contained illegal substances and firearms. (Dca8). There is no dispute that the activity supporting probable cause took place in Toms River. (See Dca4 to 7). As such, Patrolman Taranto properly appeared before a Toms River magistrate judge to request the warrant.

But the establishment of probable cause in Toms River does not limit execution of the search warrant to only when the vehicle is in Toms River. First, while the warrant itself recognized that probable cause was established

[5] This subsection addresses Points I and II in defendant's brief, and specifically those arguments that challenge the validity of the warrant.

in Toms River, it separately acknowledged that the vehicle in question was registered in Lakewood. (Dca8). After recapping Patrolman Taranto's grounds for probable cause "to believe that in and upon a certain vehicle within the Township of Toms River in this said state," the warrant then proceeded to describe the vehicle, identifying the registration and VIN numbers, as well as the fact that it was registered in Lakewood. (Dca8). The warrant thus acknowledged on its face that the activity in question may span multiple jurisdictions. Second, and relatedly, the warrant commanded a search of the "premises hereinabove named," which refers to the description of the vehicle itself, and not the place, i.e., the physical location (Toms River), where probable cause arose. (Dca8 to 9). The warrant thus identified the exact inherently-mobile vehicle that police could stop and search; but it did not limit the location of the search to a specific locality.

Third, while Judge Gluck served as a magistrate in Toms River, the warrant expressly acknowledges it was signed in the "State of New Jersey[,] County of Ocean[,]" where both Lakewood and Toms River are located. Fourth, the warrant was addressed to "Any Law Enforcement Officer," and not just Toms River law enforcement officers. (Dca8) (emphasis added).

Fifth, and perhaps most importantly, the search warrant authorized a search on a vehicle that was readily movable between and among jurisdictions.

This is a very different situation from a warrant authorizing a search of a residence or other stationary object. Fourth Amendment jurisprudence has historically distinguished searches conducted of structures, such as houses or buildings, from readily-moveable vehicles, such as automobiles or ships. See State v. Witt, 223 N.J. 409, 423 (2015) (quoting Carroll v. United States, 267 U.S. 132, 153 (1925)). A vehicle is expected to move and not remain stationary, potentially being driven between and among various jurisdictions in New Jersey and even other states.

Indeed, the automobile exception to the warrant requirement perhaps best captures this difference, recognizing that it is often not practicable to obtain a warrant for a vehicle that can be quickly moved between localities and jurisdictions, especially given the inherent potential for the loss or destruction of evidence. Witt, 223 N.J. at 423; State v. Pena-Flores, 198 N.J. 6, 20 (2009). That same reasoning remains, and in fact, is arguably strengthened when police obtain a warrant. In this case, probable cause existed that evidence pertaining to a crime existed in defendant's vehicle — an instrumentality that could be moved between localities. The fact that a warrant authorized the search does not alter the inherent movability of the vehicle nor the potential for loss or destruction of evidence contained in that vehicle.

Contrary to defendant's suggestion, the warrant issued by Judge Gluck

was not anything like an anticipatory warrant. (Db17 to 18). By its definition, probable cause does not yet exist when a judge issues an anticipatory warrant, which typically applies only in situations that involve the controlled delivery of contraband. See State v. Ulrich, 265 N.J. Super. 569, 576 (App. Div. 1993), certif. denied, 135 N.J. 304 (1994). There is no dispute that Taranto's affidavit provided sufficient probable cause to believe that contraband would be discovered in the vehicle identified in the affidavit, and later, the search warrant. Judge Gluck issued a valid warrant that permitted police to search the vehicle — but nowhere did it require that the car be within the borders of Toms River during the execution of the search.

Defendant further contends that Judge Gluck acted outside of his municipal territorial jurisdiction when issuing the search warrant for the Jaguar and seems to suggest that Patrolman Taranto should have petitioned the Lakewood municipal court for the warrant. (Db23). Not so. Pursuant to his authority under N.J.S.A. 2B:12-16(a), Judge Gluck issued a warrant to search a vehicle based on information arising in his jurisdiction which established probable cause that a crime had occurred. Ironically, had Patrolman Taranto submitted his affidavit to the Lakewood municipal court, an almost identical search warrant would have issued, and defendant likely would be in this Court now arguing that the warrant was invalid because the events supporting

probable cause arose almost exclusively in Toms River.

Judge Gluck issued a valid search warrant based on an affidavit supporting probable cause that evidence of illegal activity would be found in the vehicle. Given the inherent movability of that automobile, the warrant did not specify where the search must occur. Stopping and searching the vehicle in Lakewood, as opposed to Toms River where the warrant issued, did not violate the scope of the warrant, especially in the absence of any allegation of bad faith on the part of the officers conducting the stop or the search.

ii. The Toms River Police lawfully stopped defendant's vehicle in Lakewood, where it was searched; the search of his home in Lakewood was also proper under the search warrant.[6]

Defendant next challenges the territorial jurisdiction of the municipal court judge who issued the search warrant for his car and home, and the Toms River police officers who executed that warrant in Lakewood.

Rule 3:5-5 instructs that "[a] search warrant may be executed by any law enforcement officer . . . ." It is abundantly clear that New Jersey jurisprudence recognizes that officers may at times be required to cross the boundaries of their municipalities in the furtherance of their official duties. See State v. White, 305 N.J. 322, 327 (App. Div. 1997). N.J.S.A. 40A:14-152.1 and

[6] This subsection addresses Point II of defendant's brief, and specifically defendant's jurisdictional arguments.

N.J.S.A. 40A:14-152.2 implicitly recognize this authority. N.J.S.A. 40A:14-152.1 authorizes an officer to arrest a suspect for a crime committed in the officer's presence and committed anywhere in New Jersey. Similarly, N.J.S.A. 40A:14-152.2 extends certain immunities to law enforcement officers lawfully acting outside their jurisdiction. And N.J.S.A. 39:5-25 defines an officer's ability to conduct a warrantless arrest after observing a motor-vehicle violation, which contains no language that limits its territorial application. See State v. O'Donnell, 192 N.J. Super. 128, 130 (App. Div. 1983).

Here, Patrolman Taranto and his fellow officers watched as defendant interacted with three separate individuals in Lakewood during their surveillance of his vehicle, each time engaging in what Patrolman Taranto testified was indicative of narcotics-based activity. Under N.J.S.A. 40A:14-152.1, Patrolman Taranto could have approached defendant in any New Jersey municipality, including Lakewood, to investigate or arrest him. Yet Patrolman Taranto testified that his priority was to operate within the four corners of the search warrant. (1T8-12 to 18; 1T21-12). He therefore established a plan to stop defendant's vehicle when it was most likely to travel into Toms River. Here, at a particular crossroad, instead of turning right or continuing straight into Toms River, defendant turned left and traveled further into Lakewood. Possessing the valid search warrant for the vehicle in question, the officers

lawfully followed defendant's car just over the border into Lakewood and conducted the motor-vehicle stop. Nothing in New Jersey jurisprudence prohibited the officers from stopping the vehicle in a neighboring jurisdiction pursuant to a search warrant.

Yet defendant claims that N.J.S.A. 40A:14-152 precluded the officers from executing the search warrant on defendant's vehicle outside of their Toms River jurisdiction. But N.J.S.A. 40:14-152, "which limits the authority of municipal police to arrest for disorderly-persons and breach-of-the-peace offenses to the limits of their municipality does not make any reference to motor vehicle offenses[,]" O'Donnell, 192 N.J. Super. at 129, nor does it define the officers' authority to execute warrants or stop a vehicle to make an arrest for a crime. More applicable to the current case is N.J.S.A. 39:5-25, which defines an officer's ability to conduct a warrantless arrest after observing a motor-vehicle violation and contains no language that limits its territorial application. See O'Donnell, 192 N.J. Super. at 130. As such, "there is manifested a clear indicia of legislative intent to permit municipal police to have authority to arrest for state motor vehicle violations committed in their presence outside of the territorial limits of the municipality which employs them." Ibid. This is especially true given that motor-vehicle violations "pose an extremely grave menace to the public safety and welfare." Ibid.

While there is no evidence to suggest that the officers observed defendant commit a motor-vehicle violation per se, they had in their possession a search warrant acknowledging probable cause to believe that the vehicle defendant drove contained evidence of criminal activity. The officers had a duty to stop the vehicle — and N.J.S.A. 39:5-25 provided the Toms River police officers with the authority to do so in Lakewood. What is more, the officers also knew that defendant had several outstanding arrest warrants, and arrested him based on those warrants. (1T11-11 to 14; 1T46-9 to 15). And, during their surveillance before the stop, officers observed defendant make what Patrolman Taranto believed to be three narcotics-related transactions. As such, even without a search warrant, the officers could have stopped defendant's vehicle in Lakewood and arrested him, based on their authority under N.J.S.A. 40A:14-152.1 and personal observations.

Had the officers failed to act and simply let defendant continue driving the vehicle further into Lakewood, they risked the possibility of losing the evidence or the warrant becoming stale. The search warrant required execution within ten days of issuance. (Dca9). Patrolman Taranto's surveillance and plan for stopping the vehicle occurred on the second day following its issuance. Now that the officers observed defendant driving the vehicle, there was the possibility that he could drive further into Lakewood

and either destroy or dispose of the evidence, commit more offenses using that same vehicle, or never even drive the vehicle near or into Toms River again within the ten-day time limitation of the warrant. Officers acted when the situation was ripe and lawful.

Even if this Court finds that the Toms River police officers should have waited until defendant drove the vehicle into Toms River, such a violation will not invalidate the search. As a general rule, slight departure from the procedural rules surrounding the issuance of warrants, such as territorial jurisdiction, or other issues not implicating probable cause, will not invalidate a search warrant. Hamlett, 449 N.J. Super. at 176; Broom-Smith, 406 N.J. Super. at 238-39. This is especially true when the warrant would have been issued in nearly identical form had the applicant appeared before a judge in a different municipality. See Hamlett, 449 N.J. Super. at 178.

Rule 3:5-7(g) echoes this conclusion: "In the absence of bad faith, no search and seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution." Indeed, New Jersey courts have continually refused to invalidate searches and arrests pursuant to warrants based on technical violations. See, e.g., Hamlett, 449 N.J. Super. at 177-78; State v. Nguyen, 419 N.J. Super. 413, 417 (App. Div.), certif. denied,

208 N.J. 339 (2011); Broom-Smith, 406 N.J. Super. at 238-39; Gioe, 401 N.J. Super. at 342; State v. Gadsden, 303 N.J. Super. 491, 505 (App. Div.), certif. denied, 152 N.J. 187 (1997). Even State v. Novembrino recognizes this limitation for applying the exclusionary rule. 105 N.J. 95, 130 n.15 (1987).

Hamlett and Broom-Smith both involved cases where the warrant authorized a search of a structure situated outside of the issuing municipality's jurisdiction; but this Court refused to invalidate the searches in both cases. Hamlett, 449 N.J. Super. at 175 (Atlantic City municipal judge authorized a search of defendant's Galloway Township motel room); Broom-Smith, 406 N.J. Super. at 232 (Berkley Township municipal judge authorized a search of defendant's Dover Township home). Here, the warrant authorized the search of a mobile vehicle traveling near the border of the issuing municipality's jurisdiction and a neighboring jurisdiction. This Court should follow the guidance in Hamlett and Broom-Smith and uphold the search of a moving vehicle as it drove just over the jurisdictional border, which arguably constitutes an even lesser technical violation, if deemed a violation at all.

After the police made a lawful stop of defendant's vehicle pursuant to the search warrant, they could then continue their investigation by searching defendant's home in Lakewood, even without the assistance of Lakewood police officers. Again, neither N.J.S.A. 40A:14-152 nor N.J.S.A. 40A:14-

152.1 "preclude[] on the one hand or authorize[] on the other hand a police officer from the jurisdiction in which a crime occurred from conducting an investigation outside of the territorial boundary of the officer's express jurisdiction." White, 305 N.J. Super. at 327.

In White, police officers from Orange traveled to Newark to investigate an offense committed in Orange. Id. at 325. This Court found their actions appropriate: "the Orange police officers could properly investigate in another municipality and obtain voluntary consent to search in connection [with that investigation.]" Id. at 332. While the panel recognized that it was oftentimes advisable for officers to be accompanied by law-enforcement representatives from the home jurisdiction, "time constraints and manpower considerations may not make this entirely feasible under all circumstances." Id. at 332 n.4.

Here, police officers lawfully stopped defendant's vehicle pursuant to a valid search warrant. A search of the vehicle and a search-incident-to-arrest of defendant both revealed evidence of drugs and guns. This dangerous combination required swift, yet lawful, action to ensure the viability of further evidence and to protect the public from potential harm. The Toms River Police therefore sought and obtained defendant's consent to search his home in Lakewood and proceeded there promptly with defendant to conduct the search. While it may have been reasonable to obtain the assistance of Lakewood

officers to aid the search, it was not improper for the Toms River officers to act quickly without them for the preservation of evidence and public safety.

In sum, the motion judge properly concluded that the Toms River police officers lawfully executed the valid search warrant as defendant drove the subject vehicle just over the border in Lakewood. This Court should affirm that reasoned decision.

D. The exclusionary rule does not apply to technical violations in obtaining or executing search warrants.

The Toms River police officers acted within the scope of a lawful search warrant when they stopped the vehicle identified in the warrant to search it, even though it was located just over the border in Lakewood. Both judges below properly denied defendant's motions to suppress and for reconsideration on those grounds. However, even if this Court finds that the Toms River police officers acted outside their municipal authority, the exclusionary rule does not apply to any such technical violations.

It is well-settled in New Jersey that "evidence obtained by a police officer in a search conducted outside the boundaries of the officer's statutory jurisdiction is not subject to exclusion." Nguyen, 419 N.J. Super. at 428. In other words, "where a police officer violates a criminal-procedure statute, such as exceeding territorial jurisdiction, evidence gathered as a result is not automatically subject to suppression." Gadsden, 303 N.J. Super. at 504

(citations omitted). Such technical violations do not violate a defendant's constitutional rights. Hamlett, 449 N.J. Super. at 176; see also Novembrino, 105 N.J. at 130 n.15 (recognizing that Rule 3:5-7(g) addresses "technically-defective" search warrants). To the contrary, suppressing evidence recovered under such infractions would "debase the judicial process and breed contempt for the deterrent trust of the criminal law." Id. at 177 (quoting State v. Bickham, 285 N.J. Super. 365, 368 (App. Div. 1995), certif. denied, 143 N.J. 516 (1996)).

Neither the municipal judge, nor the officers' search of defendant's vehicle and his residence, violated defendant's constitutional rights. Judge Gluck correctly issued the search warrant based on Patrolman Taranto's affidavit establishing probable cause. Had Patrolman Taranto appeared before a Lakewood municipal judge, that judge would have issued a similar warrant to search defendant's vehicle. See Hamlett, 449 N.J. Super. at 178. And given that the search revealed evidence of weapons, the officers swiftly requested and lawfully received consent to search defendant's home for weapons.

The fact that these actions took place just over the Toms River border in Lakewood was a mere technical violation, if deemed a violation at all. State v. Gadsden, 303 N.J. Super 491, is instructive. There, Hillside police officers obtained an arrest warrant for Gadsden from the Hillside Municipal Court. Id.

at 498. The officers went to the defendant's home in Newark, a municipality outside of their territorial jurisdiction, and arrested him, finding contraband incident to that arrest. Ibid. The panel found that arresting him in Newark violated N.J.S.A. 40A:14-152, which limited the police officers' jurisdiction to the "territorial limits of the[ir] municipality . . . ." Ibid. (quoting N.J.S.A. 40A:14-152). Gadsden thus contended that the statutory violation required suppression of the contraband. Id. at 499.

This Court rejected the defendant's claim and held that a "technical violation of a procedural law does not automatically render a search and seizure unreasonable and does not require the exclusion of evidence." Id. at 505. Although the Hillside officers violated N.J.S.A. 40A:14-152, the arrest was pursuant to a warrant, based on probable cause, and was executed reasonably. Ibid. Therefore, the violation was a "technical, procedural, statutory" one — not of constitutional dimension — and thus the officers did not infringe upon the defendant's right to be free from unreasonable searches and seizures, and so the exclusionary rule did not require that the contraband be suppressed. Id. at 505-06; see also White, 305 N.J. Super. at 332 (assuming Orange police officers violated N.J.S.A. 40A:14-152 when they obtained consent to search a Newark apartment, the error was statutory and did not require suppression of the evidence seized pursuant to the search); State v.

Konzelman, 204 N.J. Super. 389, 394 (Law Div. 1985) (violation of New York law by New Jersey officers arresting defendant in New York was constitutionally reasonable, and so suppression was not required).

So too here. When Toms River officers stopped defendant's vehicle, they did so pursuant to a judicially-authorized Toms River search warrant issued upon probable cause, even though it was executed within the territorial jurisdiction of Lakewood. Following the search of defendant's vehicle, the same Toms River police officers obtained defendant's consent to search his residence located in Lakewood, which they subsequently searched. Any error related to the jurisdictional authority of the officers when executing the search warrant and consent-to-search, if error at all, was simply ministerial. Because ministerial violations do not affect defendant's constitutional right to be free from unreasonable searches and seizures, the exclusionary rule does not operate to keep such probative evidence from the fact-finder. Judge Gizinski and Judge Ryan properly concluded so, which this Court should affirm.

The same result is required for the warrant, despite defendant's protestations that a search conducted in Lakewood invalidated the search warrant itself. (Db21 to 24). Constitutionally, inconsequential deviations in the warrant application process should not invalidate a warrant that was issued by a neutral and unbiased municipal judge upon a finding of probable cause.

Gioe, 401 N.J. Super. at 342-44.

In Goie, police officers obtained via facsimile a search warrant for Gioe's impounded automobile, and the ensuing search uncovered thirteen pounds of marijuana hidden in the trunk. Id. at 336-37. Gioe moved to suppress the marijuana. While he did not dispute that there was sufficient evidence to establish probable cause, he argued that the warrant was defective, in part, because it violated Rule 3:5-3(a), which requires the applicant to appear personally before the judge. Id. at 337. The appellate panel concluded that procedural irregularities in proceedings to obtain a search warrant by facsimile and over the telephone fell under Rule 3:5-7(g) because the investigating officer established sufficient probable cause. Id. at 342. Finding no evidence of bad faith, the Goie panel ruled that because the procedural requirements for obtaining a warrant were neither intentionally nor deliberately disregarded, it refused to suppress the evidence. Ibid.

Similar to Goie, there is no evidence nor suggestion that Patrolman Taranto acted in bad faith by executing the warrant in Toms River as opposed to Lakewood, nor that the officers disregarded any law when seeking consent to search defendant's home. To the contrary, Patrolman Taranto went to the correct municipality to seek the warrant, given that all the events establishing probable cause arose in Toms River. Perhaps most importantly, despite

potential technical irregularities, the record clearly supports Judge Gluck's determination that the affidavit established "sufficient probable cause to justify the issuance of the search warrant." Gioe, 401 N.J. Super. at 344.

In the absence of bad faith, the search warrant issued by Judge Gluck was valid when the Toms River officers stopped the subject vehicle in Lakewood. Because any potential jurisdictional deviations were limited in scope and amounted at most to technical errors, and because a detached and neutral magistrate found sufficient probable cause before authorizing the search, the exclusionary rule is inapplicable. This Court should affirm the ruling denying defendant's motion to suppress.

Defendant also unsuccessfully attempts to rely on federal case law to ask this Court to reevaluate its jurisprudence defining territorial infractions as technical violations outside of the exclusionary rule. (Db26 to 32). But each case cited by defendant involves a court's interpretation of statutes, rules, and common law unique to that federal or state jurisdiction, and whether the exclusionary rule should be applied. Specifically, the federal court cases involve whether a magistrate judge in one jurisdiction can authorize a search of a stationary object located in another jurisdiction, based on the powers conferred by Federal Rule of Criminal Procedure 41 and the Federal Magistrates Act, 28 U.S.C. § 636. See United States v. Henderson, 906 F.3d

1109, 1112, 1115 (9th Cir. 2018), cert. denied, 139 S. Ct. 2033 (2019); United States v. Werdene, 883 F.3d 204, 212-14 (3d Cir.), cert. denied, 139 S. Ct. 260 (2018); United States v. Horton, 863 F.3d 1041, 1044 (8th Cir. 2017), cert. denied, 584 U.S. 918 (2018); compare United States v. Baker, 894 F.2d 1144, 1146-47 (10th Cir. 1990) (state authorities cannot secure a warrant to search property located within Indian tribal lands); (Db29 to 30).

The remaining cases examine a particular state's criminal procedural rules and statutes that authorize the issuance of search warrants by magistrate judges in those specific jurisdictions. United States v. Master, 614 F.3d 236, 241 (6th Cir. 2010), cert. denied, 568 U.S. 1074 (2012); State v. Frazier, 558 S.W.3d 145, 153-56 (Tenn. 2018); State v. Rupnick, 125 P.3d 541, 551-52 (Kan. 2005); State v. Wilson, 618 N.W.2d 513, 516, 517-20 (S.D. 2000); Commonwealth v. Shelton, 766 S.W.2d 628, 629-30 (Ky. 1989); Crayton v. State, 485 S.W.3d 488, 503-04 (Tex. App. 2016); State v. Dulaney, 997 N.E.2d 560, 565-66 (Ohio Ct. App. 2013); State v. Kirkland, 442 S.E.2d 491, 491-92 (Ga. Ct. App. 1994); (Db26 to 27).

But New Jersey courts are not bound by the interpretation of statutes and rules different than those in this State. To the contrary, our courts must interpret and adhere to New Jersey statutory and case law, whether it is the same or different than parallel laws in other jurisdictions. See, e.g., State v.

Ates, 217 N.J. 253, 269-72 (interpreting New Jersey's specific wiretap law, but also considering federal court cases that have interpreted the federal statute on which the New Jersey law was based), cert. denied, 574 U.S. 935 (2014); State v. Burns, 462 N.J. Super. 235, 243-44 (App. Div.) (recognizing that New Jersey's wiretap statute is more restrictive than its federal counterpart), certif. denied, 241 N.J. 477 (2020).

This is true, especially here, where New Jersey law regarding magistrate jurisdiction and the application of the exclusionary rule for warrant violations does not follow federal law. See Master, 614 F.3d at 241 ("[a] state is allowed to determine when a person is authorized to approve warrants, where that person has the authority to approve warrants, and what type of warrants that person is allowed to approve); Novembrino, 105 N.J. at 156-58 (declining to recognize in New Jersey the "good-faith" exception to the exclusionary rule as identified in United States v. Leon, 468 U.S. 897 (1984)). With that in mind, both this Court and the New Jersey Supreme Court have continually determined that evidence gathered pursuant to territorial discrepancies and other technical violations shall not be suppressed under the exclusionary rule. Hamlett, 449 N.J. Super. at 176-78.

In sum, the motion judge properly denied defendant's motion to suppress because Judge Gluck issued a valid search warrant pursuant to a finding of

probable cause, and Toms River police officers were authorized to execute that warrant on the subject vehicle, even though they stopped it in Lakewood instead of Toms River. To protect the public and preserve evidence, the police executed the consent search warrant at defendant's home in Lakewood. There is no suggestion that the Toms River police officers acted in bad faith nor intentionally circumvented any procedural or legal requirements. The searches of defendant's person, vehicle, and home in Lakewood were all lawful. In any event, the exclusionary rule is inapplicable to any territorial or jurisdictional violations. The judge below correctly rejected defendant's motions to suppress and for reconsideration, and these rulings should be affirmed.

POINT II

THE JUDGE BELOW PROPERLY RULED THAT POLICE OBTAINED VALID CONSENT TO SEARCH DEFENDANT'S RESIDENCE.[7]

Defendant claims that, despite signing the consent-to-search form, he never voluntarily consented to the search of his home for three reasons: first, the police threatened to "tear through the house" if he refused consent; second, the police inferred that a search was inevitable regardless of whether he consented or not; and, third, officers suggested that the police, as opposed to

[7] This Point responds to Point III in defendant's brief. (Db33 to 44).

the court, would ultimately decide whether to issue a warrant for a search of his residence. (Db33). None of these claims have merit.

Here, based on a thorough review of the record — including the motor-vehicle recording (MVR) and a State-provided transcript of the stop — reveal that defendant and police had a productive conversation about defendant's concerns, and officers answered his questions and provided an accurate description of future events should defendant refuse consent to search at that moment. Taken in context, the back-and-forth dialogue between defendant and the officers at the scene was conversational and demonstrated that defendant knew that he had the right to decline the request for consent to search. Ultimately, officers agreed to adhere to defendant's request to protect his wife and granddaughter from a surprise intrusion when he voluntarily provided consent. Judge Gizinski's review of this same evidence resulted in a denial of defendant's motion to suppress which this Court should affirm.

A. The Motion-to-Suppress Facts

Upon stopping the vehicle pursuant to a valid search warrant, police asked defendant to exit the car, placed him in handcuffs, and arrested him for distribution of CDS. (1T46-6 to 15; Da15 3:12:39 to 3:13:57; Da17). Defendant was calm and cooperative as he exited the vehicle. (1T47-18 to 20). Police then conducted a search-incident-to-arrest of defendant's person.

(1T49-1 to 7; Da15 3:14:15 to 3:14:52; Da17). Upon discovering two ammunition rounds and over $1,600 of cash in defendant's pockets, police began to talk about the need to search defendant's residence. (1T49-1 to 4; Da15 3:14:50; Da17). Given that officers watched defendant leave his house earlier that day, Patrolman Taranto testified that he believed defendant may have additional money, drugs, and weapons at his home. (1T51-2 to 9). Police then asked defendant the following questions concerning his residence:

> Officer: We're going back to the house.
>
> Officer: Who's back in your house right now?
>
> . . .
>
> Officer: Nobody but your wife?
>
> (Defendant inaudible).
>
> . . .
>
> Officer: Yeah, yeah. So here's the deal. It's just your wife at the house right now?
>
> (Defendant inaudible).
>
> Officer: And your granddaughter? Okay. Listen, here's the deal. Right now we have enough to write a search warrant on your house and we're well within that means, so either we're gonna go that route or we can be a gentleman and we can go back, and you can give us consent and we can find whatever else you've got in there.
>
> Officer: Either, either way we're going back to the

> house. . . . It's either with your cooperation or without your cooperation.
>
> Defendant: I understand that. . . . I'm not gonna argue with you.
>
> . . .
>
> (Defendant inaudible).
>
> Officer: If you're gonna give us consent then yeah, we'll, we'll be, you just tell us where everything is, we're not going to tear your house apart. Okay? We're cool with that?
>
> (Defendant inaudible).
>
> Officer: Alright. So what I'm going to do is . . .
>
> [(Da15 3:13:30 to 3:15:40; Da17 to 18).]

The dialogue regarding the scope of the search then continued, with an officer informing defendant that "we're gonna do the consent here so when we get over there we're not disturbing your wife any more than we have to. Okay?" (Da15 3:16:45 to 3:16:51; Da18). After a discussion about defendant's legal name, Patrolman Taranto then began to read aloud and explain the consent-to-search form to defendant. (1T52-12 to 53-11; 1T58-9 to 12; Da15 3:18:18 to 3:22:38; Da24). At one point, defendant intervened and asked questions, but he remained calm and cooperative. Furthermore, Patrolman Taranto listened to defendant, making eye contact the whole time. (1T61-11 to 62-8; Da15 3:22:39 to 3:23:07). Defendant was also heard to say,

"I just want you to be respectful . . . ." (Da15 3:23:00 to 3:23:07; Da24).

In response to defendant's questions, Patrolman Taranto stated: "Yeah. We got it completely. Listen, we can, we can keep these guys out, a couple guys got to come in with me just because we're going into a place that we don't know. We'll . . . be respectful. I promise. I mean It's my, as a man I'm giving you my word. Okay?" (Da15 3:23:19 to 3:23:33; Da25). The officer then read the consent-to-search form in its entirety and asked if defendant understood. (Da15 3:23:33 to 3:24:11; Da25; Da52).

Defendant said something inaudible in response. (Da15 3:24:11 to 3:24:21; Da25). Patrolman Taranto testified that defendant had queried what would happen if he refused consent. (1T61-23 to 62-8; 1T63-17 to 20). To answer this question, another officer told defendant:

> We're not gonna search it on the consent. We'd wind up going back to our headquarters to write a search warrant, we'll come back. And make entry into the house. So basically you're saving us some time here and you're saving yourself a little bit of heart ache. We write a search warrant, we're gonna tear through the house. You know what I mean?
>
> [(1T63-25 to 64-6; Da15 3:24:21 to 3:24:38; Da25).]

To this defendant replied, "You guys did that one time . . . " (Da15 3:24:38 to 3:24:46; Da25). In response to further questions by defendant, an officer again informed defendant that they would "petition the court for a search warrant" if

he refused to consent. (Da15 3:25:06 to 3:25:09; Da26).

Defendant then asked the officers to call his wife first and let her know that they are coming to the house for a search. (Da15 3:25:26 to 3:25:28; Da26). Police refused this request, explaining that such an advanced warning could risk the destruction of evidence. (1T65-2 to 6; Da15 3:25:28 to 3:25:49; Da26). But recognizing the importance that defendant placed on respect for his wife, officers explained to him that "we're gonna let you knock on the door, we'll let you go in first, say honey I'm here. We'll let you do that first, we're gonna give you that courtesy, but we can't let you make any phone calls." (Da15 3:25:49 to 3:25:56; Da26).

Defendant then signed a consent-to-search form, in which he confirmed that he consented "without pressure" and that he understood he had the "right to refuse to consent." (1T58-11 to 60-21; Da15 3:25:58 to 3:26:14; Da52). After signing the form, the officers continued their conversation with defendant, engaging in congenial banter; it also appeared that defendant laughed at one point. (Da15 3:27:35 to 3:28:47). Upon entering the police vehicle, defendant said something inaudible to an officer, to which the officer responded, "I like you too." (Da15 3:28:55 to 3:28:57).

B. The Ruling on the Motion to Suppress

When considering the consent search of defendant's residence, Judge Gizinski first rejected defendant's "fruit of the poisonous tree" argument because she previously held that execution of the search warrant was valid. (2T18-7 to 11). The judge then considered the facts surrounding defendant's consent, including a review of the MVR of the stop, and found that

> [d]efendant was advised of his Miranda rights, placed under arrest, officers searched his person and advised him of the warrant to search his vehicle and officers searched his vehicle. The officers then advised [d]efendant they would apply for a search warrant for his home, but stated that if he consented to a search, they would permit him to show them where he stored the CDS rather than perform a more comprehensive search that would result from a warrant.
>
> Officer Taranto then read the consent form out loud and advised the [d]efendant he had a right to refuse consent. Defendant then signed the Consent to Search Form. . . .
>
> Defendant was present for the search and assisted officers in locating the evidence. . . . Nothing about the interaction demonstrated that officers acted inappropriately or inappropriately coerced [d]efendant into signing the consent form.
>
> [(2T18-12 to 19-9).]

Based on the above findings, Judge Gizinski concluded that defendant voluntarily consented to a search of his residence in Lakewood. (2T19-10 to 11). This ruling should be affirmed.

C. Defendant voluntarily consented to a search of his residence, without threats or coercion.

"Federal and New Jersey courts recognize the consent to search exception to the warrant requirement." State v. Lamb, 218 N.J. 300, 315 (2014). It is axiomatic that consent must be given voluntarily, and not under duress or coercion. Ibid.; State v. Chapman, 332 N.J. Super. 452, 466 (App. Div. 2000). "The heart of [New Jersey's] voluntariness analysis hinges on whether an individual has knowingly waived his or her right to refuse consent." State v. Hagans, 233 N.J. 30, 40 (2018). Consent is a factual question determined from the relevant circumstances. State v. Koedatich, 112 N.J. 225, 264 (1988), cert. denied, 488 U.S. 1017 (1989); State v. Williams, 461 N.J. Super. 80, 103 (App. Div. 2019), certif. denied, 241 N.J. 92 (2020).

The Supreme Court in State v. King set forth various non-exhaustive factors to guide a trial judge's analysis of whether consent was voluntarily given. 44 N.J. 346, 352 (1965); see Hagans, 233 N.J. at 39; Williams, 461 N.J. Super. at 103-04. Factors potentially indicating coerced consent include,

(1) that consent was made by an individual already arrested;

(2) that consent was obtained despite a denial of guilt;

(3) that consent was obtained only after the accused had refused initial requests for consent to search;

(4) that consent was given where the subsequent

> search resulted in a seizure of contraband which the accused must have known would be discovered; and,
>
> (5) that consent was given while the defendant was handcuffed.

Hagans, 233 N.J. at 39; King, 44 N.J. at 352-53. The factors potentially indicating voluntariness of consent include,

> (1) that consent was given where the accused had reason to believe that the police would find no contraband;
>
> (2) that the defendant admitted his guilt before consent; and,
>
> (3) that the defendant affirmatively assisted the police.

Hagans, 233 N.J. at 39-40; King, 44 N.J. at 353.

As made clear in Hagans, the above factors are "not commandments, but 'guideposts to aid a trial judge in arriving at his conclusion.'" 233 N.J. at 40 (quoting in part King, 44 N.J. at 353). In King, the Court cautioned that "the existence or absence of one or more of the factors . . . may be of great significance . . . in one case, yet be of slight significance in another." Ibid. The Court has also explicitly recognized that consent may be voluntarily given "even though the consent was obtained under the authority of the badge or after the accused had been arrested." 233 N.J. at 40 (citing King, 44 N.J. at 353). "Voluntariness depends on 'the totality of the particular circumstances

of the case' with each case 'necessarily depend[ing] upon its own facts.'" Ibid. "The State has the burden of proving consent was given freely and voluntarily." Lamb, 218 N.J. at 315.

An appellate court reviews a trial judge's factual findings crediting those "which are substantially influenced by [the] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Alessi, 240 N.J. 501, 507 (2020). The reviewing court may not substitute the trial judge's findings of fact for its own because it may draw a different conclusion from the evidence. Ibid. Rather, an appellate court "must defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record." State v. Erazo, 254 N.J. 277, 297 (2023); see also State v. Evans, 235 N.J. 125, 133 (2018). "Video-recorded evidence is reviewed under the same standard." Hagans, 233 N.J. at 38 (citing State v. S.S., 229 N.J. 360, 381 (2017)).

Here, defendant provides nothing to set aside the judge's determination, based on the totality of the circumstances, that his consent was valid. Defendant first claims that the officers' suggestion that they would "tear [his] house apart" was a threat resulting in involuntary consent. Not so. Instead, officers were providing defendant with an accurate description of the scope of a search when conducted with a warrant versus with consent.

Throughout the interaction with police, defendant was concerned about the hardship an invasive intrusion would have on his family. Knowing this, the officers explained that a consent search would result in a more limited intrusion, and they could execute the search in a more orderly manner if defendant cooperated. See (Da15 3:14:54 to 3:15:39; 1T72-9 to 15). As explained at the hearing, typically, a search warrant involves a search of "every crevice, every drawer[,] every part of the house[.]" (1T66-13 to 16). Conversely, when police conduct a search based on consent, the scope of the search is more limited, and officers may be a "bit more tact[ful]," knowing that the suspect could tell them where the evidence is located, but he or she could also stop the search at any point. (1T67-1 to 5).

The understanding of the juxtaposition between the limited consent search — as opposed to a more disruptive and intrusive warrant-based search — may have been enough to sway defendant's decision to agree to the consent search. Then, as promised, upon arriving at defendant's house, Taranto and his colleagues abided by the understanding to limit any disturbance at the residence. Only three of the eight officers present during the vehicle stop went into the house, and those officers had defendant lead them to the evidence. (1T70-16 to 72-4). Officers limited the ten-minute search to only those areas that defendant indicated contained contraband. (1T72-16 to 25; 1T74-3 to 5).

Here, the officers reasonably informed defendant of his options and let him choose. Indeed, such a choice strengthened, as opposed to weakened, the voluntariness of defendant's consent.

And contrary to defendant's contention otherwise, the officers also accurately told defendant that if he refused consent, they would seek a search warrant to search his residence. Importantly, no officer ever said that a search warrant was inevitable, only that if he refused consent, officers would seek a search warrant and return to his home without his cooperation. (Da15 3:24:13 to 3:25:10; Da18). Even so, an officer's comment about the inevitability of a search warrant "does not indicate coercion if it is 'a fair prediction of events that would follow' rather than 'a deceptive threat made to deprive [an individual] of the ability to make an informed consent.'" Hagans, 233 N.J. at 42 (quoting State v. Cancel, 256 N.J. Super. 430, 434 (App. Div. 1992), certif. denied, 134 N.J. 484 (1993)). "As a best practice, police officers should tell a suspect only the measures they intend to take — apply for a search warrant — and should not offer a prediction about whether a warrant will issue." Hagans, 233 N.J. at 42.

Here, officers had sufficient probable cause to believe that defendant's home may have contained contraband or weapons and thus, a judge likely would have issued a warrant to search the residence. In informing defendant

of such likelihood, the police expressed an accurate view of future events. To that end, it was indeed true that officers would return to his house "either with [his] cooperation or without[.]" (Db42; Da18).

And importantly, defendant knew that, if he refused consent, the police would have to "write a search warrant" and then petition a court for issuance before they could search his home. (Da15 3:24:13 to 3:25:10; Da18; Da25; Da26). While informing defendant that police had enough evidence to "write a search warrant" was perhaps a bit ambiguous, it certainly did not coerce defendant into agreeing to a consent search. And whatever confusion that wording may have caused, an officer later clarified it by informing defendant that police would "petition the court for a search warrant." (Da15 3:25:05 to 3:25:10). Thus, defendant was correctly informed of the process before he consented to the search. See also State v. Daley, 45 N.J. 68, 76 (1965) ("[T]he existence of a written waiver points strongly to the fact that the waiver was specific and intelligently made."), cert. denied, 384 U.S. 1022 (1966).

Based on a previous experience, defendant knew what it was like to have police enter his home unannounced. Defendant's thoughtful questions and calm demeanor strongly suggested that he wished to avoid that same situation for his wife. But asking questions does not equal coercion. Defendant never once expressed that he would not consent. To the contrary, his questions and

concerns reveal that he would agree to a consent search but needed to first confirm that the search would be limited in scope and scale.

This is true despite the possible presence of some of the potentially-coercive King factors. See Hagans, 233 N.J. at 42-43. It is true that defendant was under arrest and handcuffed when he consented to the search of home, and that defendant himself directed police to the contraband in his house upon arrival. King, 44 N.J. at 352-53. But a review of the totality of the evidence, including the MVR and accompanying transcript, more than demonstrates the voluntariness of defendant's consent. MVRs did not exist when the Supreme Court decided King and established the various factors to consider when analyzing consent. See Hagans, 233 N.J. at 40. Now, an MVR may aid the trial court by providing a visual and auditory glimpse into the interaction between the police and the suspect. Id. at 41.

A review of the MVR in this case — from the moment police stopped defendant's vehicle to placing him in the patrol car for transport — confirmed Patrolman Taranto's testimony that defendant remained cooperative and conversational during the exchange with police. (Da 3:12:55 to 3:29:45; 1T61-14 to 62-8). No officer raised their voice nor threatened defendant during the entire interaction. Instead, the officers and defendant engaged in productive conversations, complete with eye contact and direct responses to

questions, which culminated in jovial banter as defendant entered the police vehicle. Officers answered defendant's questions and addressed his concerns. Defendant was cooperative and helpful, even assisting an officer to open his trunk when they struggled to do so. (1T51-23 to 52-5); see also King, 44 N.J. at 353 (affirmatively assisting police is behavior indicative of voluntariness).

Just as "reading a cold transcript is no substitute for viewing the video in evaluating the circumstances of an interrogation[,]" S.S., 229 N.J. at 385, neither is extracting quotes from a continuing dialogue an accurate depiction of the tenor of the conversation. Here, Judge Gizinski reviewed the MVR and transcript in their entirety, without plucking quotes out of context, to evaluate the officers' and the defendant's demeanor, questions, and commentary. She then determined that the evidence showed that defendant voluntarily consented to the search of his home under the totality of the circumstances. See (2T18-21 to 23 (finding that Patrolman Taranto informed defendant of his right to refuse consent)). Sufficient evidence exists to support that determination. The judge's factual and legal findings support the ruling that consent was both knowing and voluntary and thus, should be affirmed.

POINT III

POLICE HAD REASONABLE AND ARTICULABLE SUSPICION TO BELIEVE THAT DEFENDANT HARBORED CONTRABAND INSIDE HIS RESIDENCE.[8]

After searching defendant and his vehicle, officers had sufficient reasonable suspicion that defendant's home contained more evidence of criminal activity, which justified their request for consent to search his home. A consent search of a vehicle after a lawful stop must be supported by a reasonable and articulable suspicion that the suspect has engaged in criminal activity. State v. Carty, 170 N.J. 632, 647, modified on other grounds, 174 N.J. 351 (2002). Yet the Supreme Court declined to explicitly extend this same requirement to a request to search something other than a motor vehicle, such as a residence, as is the case here. State v. Domicz, 188 N.J. 285, 305-08 (2006); State v. Birkenmeier, 185 N.J. 552, 564 n.3 (2006).

But even if the Carty rule applies when police conduct a consent search of a residence immediately following a lawful motor-vehicle stop, officers met the standard here. The facts in Birkenmeier are instructive: there, police stopped the defendant's car based on a CI tip. 185 N.J. at 562. Upon

[8] This Point responds to Point IV in defendant's brief. (Db45 to 48).

approaching the vehicle, an officer observed a large laundry bag on the front seat and smelled a strong odor of marijuana. Ibid. The Supreme Court confirmed that those observations, combined with the corroboration of the tip, established probable cause sufficient to trigger the automobile exception to the warrant requirement and permit a lawful warrantless search of the vehicle. Ibid. Those same facts establishing finding of probable cause also authorized the police to ask for Birkenmeier's consent to search his home. Id. at 564.

The facts here are even more compelling than Birkenmeier. Before stopping defendant's vehicle, the police already had probable cause in the form of a search warrant to believe the vehicle contained contraband. Officers watched as defendant drove the target vehicle away from his residence and engage in what appeared to be drug-related activity. Then, after executing the searches at the scene, the officers recovered a weapon, ammunition, drugs, and a large amount of cash. If a CI tip, the observation of a bag, and the odor of marijuana is enough to establish a sufficient reasonable and articulable suspicion to seek consent to search a home under Birkenmeier, then certainly the recovery of drugs, guns, and cash is sufficient to justify a request to search the very location where that vehicle and person were observed by police earlier that same day. The consent search of defendant's home complied with Carty because the officers had a "reasonable and articulable suspicion that a criminal

offense [was] being . . . committed prior to requesting consent to search." Carty, 170 N.J. at 648. There is no reason to disturb the court's ruling below.

CONCLUSION

For the foregoing reasons, the State urges this Court to affirm the denial of the motion to suppress and affirm defendant's convictions and sentences.

Respectfully submitted,

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