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July 15, 2024

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LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex - CN 006
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Movant) v.
Jonathan E. Lightsey (Defendant-Respondent)
Indictment No. 23-12-00850

Criminal Action: On Motion for Leave to Appeal from an Order of the Superior Court of New Jersey, Law Division, Union County.

Sat Below: Hon. Chanel Hudson, J.S.C.

Honorable Judges:

Pursuant to R. 2:6-2(b), and R. 2:6-4(a), this letter in lieu of a formal brief is submitted on behalf of the State.

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STATEMENT OF PROCEDURAL HISTORY[1]

On December 6, 2023, a Union County Grand Jury returned Indictment No. 23-12-0850-I, charging defendant-respondent Jonathan E. Lightsey with second-degree possession of CDS, to with Cocaine, with the intent to distribute, contrary to N.J.S.A. 2C:35-5a(1) (count one); third-degree possession of CDS, to with cocaine, contrary to N.J.S.A. 2C:35-10a(1) (count two); third-degree possession of CDS, to wit Fentanyl, contrary to N.J.S.A. 2C:35-10a(1) (count three); third-degree possession of CDS, to wit fentanyl, with the intent to distribute, contrary to N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3) (count four); fourth-degree possession of drug paraphernalia with intent to distribute, contrary to N.J.S.A. 2C:36-3 (count five). (Pa1 to 3).

On March 28, 2024, defendant filed a Notice of Motion to Suppress physical evidence. (Pa4 to 5). On June 10, 2024, an evidentiary hearing was held before the Honorable Chanel J. Hudson, J.S.C. (1T). On June 24, 2024, the court read its decision on the record, granting defendant's motion to suppress the evidence that was seized. (2T3-19 to 20-24; Pa6).

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[1] Pa refers to the State's appendix.
1T refers to the motion to suppress hearing transcript dated June 10, 2024;
2T refers to the motion to suppress decision transcript dated June 24, 2024.

The State's subsequent application for a stay was denied. (2T20-25 to 4). This Motion for Leave to Appeal follows.

STATEMENT OF FACTS

On Wednesday, September 13, 2023, at approximately 4:00 p.m., Elizabeth Police Officer Liam Kiniery, along with Officer Matthew Fonseca and Officer Emmanuel Maglione, was assigned to the narcotics division and was on patrol in an unmarked car the area of Spring Street (a/k/a Routes 1 & 9), and Fairmount Avenue. (1T5-1 to 6-24). Officer Kiniery drove into the parking lot of the Wawa located at 595 Spring Street, a location known to be used by narcotics dealers and where he had made several arrests in the past. (1T7-2 to 19). While patrolling the parking lot, Officer Kiniery observed a silver Infiniti that had parked between two box trucks behind the main parking lot of the Autozone, a business next to the Wawa. (1T14-5 to 18). Officer Kiniery parked his car in the lot when his attention was drawn to the Infiniti because it appeared to have backed into the parking spot in an effort to conceal itself from traffic or law enforcement and had a large Giants football team sunshade obstructing the front windshield. (1T16-1 to 5; 1T18-2 to 16).

Officer Kiniery observed a female who is known to law enforcement as a drug user, speaking with the driver of the Infiniti. (1T16-9 to 17-3). After about two minutes, the female handed the driver an unknown quantity of U.S.

currency in exchange for a small item or items from the driver of the Infiniti. (1T17-4 to 14; 1T18-23 to 19-24). The female then quickly walked away. (1T19-24). Officers did not stop the female after observing only one hand-to-hand transaction because they wanted to confirm their belief that defendant was engaging in narcotics transactions and because they did not want to disclose their surveillance position at that time. (1T39-6 to 19).

The officer then ran the license plate of the Infiniti and learned that it was registered to defendant, an individual known to law enforcement. In particular, Officer Kiniery was aware that on a previous occasion, law enforcement was attempting to execute a search warrant related to defendant and he fled in his vehicle causing several accidents. (1T22-7 to 15). Law enforcement then made the decision to not approach defendant in his car to avoid potential danger to the public. (1T22-22 to 23-1).

Approximately 30 minutes later, a second female approached the driver's side window of defendant's car and handed the driver an unknown quantity of currency in exchange for a small item. (1T23-2 to 10). This transaction took approximately two minutes, which is longer than a typical narcotics transaction which usually takes approximately 30 seconds. (1T23-11 to 20). Officers did not stop the buyer at that time because they did not have back-up to conduct a stop of the buyer, nor did they want to disclose their

location to defendant. (1T39-1 to 15; 1T43-6 to 43-22). Officer Kiniery radioed for assistance; other units arrived approximately 10 to 15 minutes later and they continued their surveillance. (1T24-8 to 18).

Forty minutes later, at approximately 5:00 pm, a third female approached the driver's side of the Infiniti and knocked on the window. (1T25-1 to 7; 1T26-2 to 15). The door opened and the woman handed the driver an unknown quantity of currency. One or two minutes later, the door opened and the driver dropped an item on the ground, which the female picked up and then entered into a Jaguar sedan with an illegible temporary license plate. (1T25-11 to 17). Law enforcement attempted to stop this suspected buyer but was unable to do so because the only back-up unit equipped with lights and sirens could not locate the Jaguar in of the heavy traffic. (1T25-21 to 26-1).

After the third transaction, the driver of the Infiniti exited the car and was approached by a known female drug user, Andrea Cardona, who directed defendant's attention to the unmarked police vehicle. (1T26-25 to 27-5). Defendant then crossed through the parking lot and went into the Wawa through the rear doors. (1T27-6 to 8). Officer Kiniery believed their surveillance location had been compromised and, when defendant exited the store, officers approached defendant. Officer Kiniery explained that they did

not want to give defendant an opportunity to enter his vehicle and attempt to flee. (1T27-11 to 28-1).

Officers commanded defendant to stop and, fearing defendant had a weapon, Officer Maglione drew his weapon. Defendant resisted arrest attempting to avoid detention. Eventually, defendant was detained approximately 10 to 15 feet from his car, handcuffed and placed in the rear of a patrol vehicle. (1T28-20 to 25; 1T47-17 to 19).

Officers then approached the Infiniti, but were unable to see if there were any other occupants. (1T29-2 to 6). Officer Kiniery opened the driver's side door of the Infiniti and observed suspected crack cocaine residue scattered on the front driver's seat. (1T30-6 to 18). Officer Kiniery and other law enforcement searched the Infiniti, having probable cause to believe there was additional contraband in the car. (1T29-2 to 16). Officers recovered $660 in U.S. currency, low denominations, from defendant's person, and, 25 grams of suspected crack cocaine and 60 glassine envelopes containing suspected heroin from the Infiniti. (1T29-7 to 25).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY SUPPRESSED THE EVIDENCE FOUND IN DEFENDANTS VEHICLE INCORRECTLY FINDING THAT PROBABLE CAUSE WAS NOT SPONTANEOUS AND UNFORESEEABLE, THUS, THE INTEREST OF JUSTICE DEMANDS THE STATE'S MOTION FOR LEAVE TO APPEAL BE GRANTED. (2T3-15 to 20-24; Pa6)

The Supreme Court's holding in State v. Witt, 223 N.J. 409, 447 (2017), permits the warrantless search of a motor vehicle after an investigative stop where the police actions giving rise to probable cause to search the vehicle were prompted by circumstances that were "unforeseeable and spontaneous." Nonetheless, the trial court here, relying upon the Court's decision in State v Smart, 253 N.J. 156 (2023), found that the search of the vehicle was not justified because the circumstances giving rise to probable cause were not "unforeseeable or spontaneous," and suppressed the seized evidence. (2T19-23 to 20-23). However, many of the factual findings made by the trial court are unsupported by the record and thus, the facts of Smart are clearly distinguishable. Indeed, given the facts of this case, it is clear that the evidence should not be suppressed. Therefore, the trial court erred in

suppressing the evidence. Moreover, the State cannot appeal this evidentiary ruling from a dismissal or an acquittal and, thus, this is the only opportunity for the State to challenge the adverse ruling at issue. As such, the State's Motion for Leave to Appeal must be granted and the trial court's clearly erroneous ruling must be reversed in the interests of justice.

Parties do not have a right to appeal an interlocutory order under the Rules of Court. In re Pa. R.R. Co., 34 N.J. Super. 103, 107-08 (App. Div. 1955), aff'd, 20 N.J. 398 (1956). Rather, leave to file an interlocutory appeal of a trial court's order only is permitted "in the interest of justice." R. 2:2-4; Brundage v. Estate of Carambio, 195 N.J. 575, 598-99 (2008). See R. 2:2-2(b) (providing that this Court may take appeals from interlocutory orders to "prevent irreparable injury"). An interlocutory appeal is not appropriate to "correct minor injustices ... ." Romano v. Maglio, 41 N.J. Super. 561, 567 (App. Div.), certif. denied, 22 N.J. 574 (1956), cert. denied, 353 U.S. 923 (1957). When leave is granted, it is because there is the possibility of "some grave damage or injustice" resulting from the trial court's order. Id. at 568. The moving party must establish, at a minimum, that the desired appeal has merit and that "justice calls for [an appellate court's] interference in the cause." Romano, 41 N.J. Super. at 568.

Here, the trial court made inaccurate factual findings and incorrectly applied the holdings of Smart and Witt, in finding that the automobile exception did not apply to the roadside search of defendant's car because the circumstances giving rise to probable cause were not spontaneous or unforeseeable. Without this evidence, the State's ability to proceed to trial is significantly diminished if not eliminated altogether. Moreover, the State cannot appeal this evidentiary ruling from a dismissal or an acquittal and, thus, this is the only opportunity for the State to challenge the adverse ruling at issue. As such, the State's Motion for Leave to Appeal must be granted and the trial court's clearly erroneous ruling must be reversed in the interests of justice.

Appellate review of a trial court's decision on a suppression motion is well established. State v. Washington, 475 N.J. Super. 292, 300 (App. Div. 2023). The trial court's factual findings are "entitled to deference unless they were 'clearly mistaken' or 'so wide of the mark' that the interests of justice require[] appellate intervention." State v. Elders, 192 N.J. 224, 245 (2007). A trial court's legal conclusions, however, and its view of "the consequences that flow from established facts," are reviewed de novo. State v. Hubbard, 222 N.J. 249, 263 (2015).

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect against "unreasonable searches and seizures." U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. A search triggering constitutional scrutiny occurs when government agents intrude into an area where an individual has "a reasonable' expectation of privacy[.]'" See Terry v. Ohio, 392 U.S. 1, 9 (1968) (citing Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan J., concurring)); see also State v. Hinton, 216 N.J. 211, 229 (2013).

Under both constitutions, "searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Elders, 192 N.J. 224, 246 …(2007)). And to overcome that presumption under both constitutions, the State must show by a preponderance of evidence that the search falls within one of the well-recognized exceptions to the warrant requirement. State v. Manning, 240 N.J. 308, 329 (2020); see also United States v. Matlock, 415 U.S. 164, 177 (1974). "One such exception is the automobile exception to the warrant requirement." Witt, 223 N.J. at 422.

In Witt, the Court abandoned the "pure exigent-circumstances requirement" it had added to the constitutional standard to justify an automobile search in State v. Cooke, 163 N.J. 657, 671 (2000), as reiterated in

State v. Pena-Flores, 198 N.J. 6, 11 (2009), and returned to the standard set forth in State v. Alston, 88 N.J. 211 (1981). Witt, 223 N.J. at 447. Specifically, the Court in Witt held "the automobile exception authorize[s] the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous," Ibid. (citing Alston, 88 N.J. at 233).

The automobile exception is premised on three rationales: "(1) a vehicle's inherent mobility; (2) the lesser expectation of privacy in an automobile compared to a home"; and (3) the recognition that a Fourth Amendment intrusion occasioned by a prompt search based on probable cause is not necessarily greater than a prolonged detention of the vehicle and its occupants while the police secure a warrant." Id. 223 N.J. at 422-23.

Recently, the Supreme Court in State v. Smart, 253 N.J. 156 (2023), clarified the requirement reiterated in Witt, that the automobile exception applies only when probable cause to search is "unforeseeable and spontaneous." In Smart, the police received a tip from a concerned citizen two months prior to the motor vehicle stop in question, which connected a particular residence and vehicle like defendant's to drug deals. Id. at 172. One month later, officers received information from a confidential informant that

defendant had used his vehicle for drug distribution. Police began surveilling the defendant in his car for forty-seven minutes until they observed circumstances resembling a drug transaction that would normally justify a warrantless search. Ibid. The police then conducted a canine sniff, which confirmed their belief that the car contained drugs. They then searched the car's interior without a warrant. Id. at 162. Given that sequence of events, the Court invalidated the search, finding probable cause had not arisen from "unforeseeable and spontaneous" circumstances. Id. at 174. The Court reasoned:

> [T]he circumstances giving rise to probable cause were anything but spontaneous; that is, they did not develop, for example, suddenly or rapidly. Rather, the circumstances unfolded over almost two hours while investigating long-held information from a CI that defendant had utilized the GMC for drug trafficking. The fact that the canine sniff is what culminated in probable cause does not eviscerate the steps that led to the sniff.

[Id. at 173.]

Relying on the Court's holding in Smart, the trial court in this case found the automobile exception did not apply and granted defendant's Motion to Suppress. Specifically, the court found that the circumstances which gave rise to probable cause were not unforeseeable or spontaneous. Likening this case to the circumstances in Smart, the trial court reasoned as follows:

> The officers went to that specific location because it was known as an open air drug market. They had got information that they believed that Mr. Lightsey was the occupant or the driver of that car from somebody that they knew to be a drug addict, and they went to that area with the expectation that there may be drug activity taking place.
>
> Moreover, what's more concerning to the Court is that the officers sat there for two or more hours, or almost two hours and watched the defendant allegedly engage in three separate hand-to-hand transactions over a two-hour period, despite the fact that there were numerous officers on scene. Had the officers approached the vehicle when they first observed the hand to hand transaction, it could have been considered unforeseen and spontaneous. However, the time in which the first transaction occurred until the time the defendant was arrested could have used to secure a warrant for the vehicle.

[2T19-25 to 20-19.]

However, a review of the testimony in this case shows that several of the trial court's factual findings are clearly mistaken and are not supported by the record, and that the trial court erred in finding that the circumstances giving rise to probable cause were not spontaneous and unforeseeable.

Foremost, in its decision, the trial court stated that the officers, "had got information that they believed that Mr. Lightsey was the occupant or the driver of that car from somebody that they knew to be a drug addict, and they went to that area with the expectation that there may be drug activity taking place."

(1T19-25 to 20-7). Yet, Officer Kiniery's testimony, which the court found credible, indicated that officers were in an unmarked car on patrol in an area known for drug activity. Officer Kienery stated he and two other narcotics officers were "[j]ust driving around patrolling looking for suspicious narcotics activity," when their attention was drawn to a silver Infiniti that was backed into a parking spot between two box trucks. (1T7-6 to 7; 1T14-16 to 18; 2T12-24 to 13-10). Contrary to the court's findings, the officers had no advance information of defendant's location, car or activities prior to observing the Infiniti in the Wawa parking lot.

Further, the trial court erroneously found that the officers were expecting to see drug activity because they were provided information from someone known to be a drug addict that Mr. Lightsey would be in the car. Rather, the officer testified that they came upon the Infiniti while they were driving around the lot and observed a female, whose name they did not know but knew as a drug user, talking to the driver. (1T16-9 to 17-3; 1T18-19 to 19-11). Officer Kiniery gave no testimony that this woman or anyone else gave him information about the car or its driver prior to entering the parking lot.

A few minutes later, Officer Kiniery observed the woman give money to the driver, receive an item in exchange, and walk away. He testified that they did not stop the woman because, "we believe (sic) that we had witnessed a

hand to hand narcotics transaction. We did not want to jump the gun yet." Officer Kiniery also explained that they did not have back up at that point and they were the only car on scene. (1T20-5 to 22).

It was not until that observation that Officer Kiniery ran the license plate of the Infiniti and learned it was registered to defendant. (1T21-23 to 22-3). Indeed, officers waited another 30 minutes before they observed a second suspected buyer, who engaged in another suspected hand to hand transaction. (1T21-2 to 19). Importantly, upon learning defendant was the registered owner of the car, officers also learned that in a previous interaction with law enforcement, defendant attempted to flee in his car and caused several motor vehicle accidents. Accordingly, officers proceeded cautiously in a crowded parking lot surrounded by a heavily trafficked highway.

Additionally, the record did not support the trial court's finding that there were numerous officers on scene which would have allowed them to approach defendant after observing the first hand to hand transaction. In fact, Officer Kiniery explained that there were no other law enforcement units in the area to assist in the investigation and that their car was a non-descript vehicle and was not equipped with lights and sirens to stop the car. (1T5-14 to 6-2; 1T33-3 to 6). Further, throughout his testimony, Officer Kineiry clearly suggested that they could not conduct an investigatory stop until they had back

up units nearby as there were only three officers in the unmarked surveillance vehicle.

Given the multiple and significant factual errors in the court's findings, it necessarily follows that the court's likening of the facts in this case to the circumstances in Smart is flawed and erroneous. Specifically, the trial court recounted that in Smart, the circumstances giving rise to probable cause were not spontaneous and unforeseeable because the officers had prior information that the defendant was selling drugs, and they observed and followed defendant for about an hour before they effectuated a motor vehicle stop and searched the vehicle. The court then compared its erroneous factual findings in concluding that the cases were similar and therefore the automobile exception did not apply. However, the facts of this case, as set forth in the credible testimony of Officer Kiniery, are clearly distinguishable.

Most notably, unlike the facts of Smart, in this case, officers did not have any information about defendant before they observed the silver Infiniti in the parking lot. Indeed, there was no prior police surveillance or information provided by concerned citizens or confidential informants about defendant's involvement in drug dealing. Instead, officers were on routine patrol when they came upon the car parked in a suspicious manner and subsequently observed hand to hand transactions.

Further, in Smart, based upon information provided by outside sources, police followed defendant's vehicle for nearly an hour before executing a motor vehicle stop and calling for a canine unit. Importantly, the information gathered about that defendant over the two-month investigation was part of the totality of circumstances that gave rise to the basis for the investigative stop.

Conversely here, officers had no information and came across defendant during a routine patrol of an area when they 'spontaneously' observed suspicious activity. It clearly was not foreseeable that officers would observe this particular defendant engage in criminal activity, more than any other individual in the Wawa parking lot. Moreover, though police learned that defendant was the registered owner of the car and that he had a criminal history, they did not know that he was the individual in the car because of the way that it was parked and the obstructed front windshield. As a result, the circumstances giving rise to probable cause in this case developed over the course of the investigation and were unforeseeable and spontaneous.

Nonetheless, the trial court found that officers had probable cause to conduct a stop of defendant and search his car after the first observed transactions, but that the extension of the investigation to observe two more transactions removed the 'spontaneous and unforeseeable' element required by Witt and Smart. (2T20-13 to 19). The court's reasoning, however, places an

undue burden on the "investigatory demands of law enforcement" that was carefully taken into account in Witt, 223 N.J. at 447. In particular, the trial court's finding disregards Officer Kiniery's testimony that although he had first observed what he believed was a hand to hand transaction at approximately 4:00 pm, he did not want to "jump the gun." Instead, the officers continued their surveillance to confirm their suspicions. Officer Kiniery stated he would not leave his surveillance position "just based off of one believed hand-to-hand narcotics transaction. We wanted to further strengthen our belief that the driver was distributing narcotics." (1T39-10 to 15). Importantly, the second transaction did not occur until approximately 30 minutes after the first, at which point they called for back-up; the third transaction did not occur until approximately 40 minutes later. (1T21-2 to 25-20). Clearly the court's reasoning would put unreasonable restraints on investigations, and would have the potential to eliminate the automobile exception if not followed.

Furthermore, the trial court's reasoning, discounts the dangerousness of the situation, i.e., defendant's known history of fleeing a scene and causing motor vehicle accidents, the limited number of officers on scene after the first and second observed transactions, the lack of back-up officers to assist in effectuating the stop and arrest of defendant and to determine whether there

were any other occupants in the car who might destroy evidence or be armed. In essence, the trial court's reasoning applied to similar future circumstances, would require law enforcement officers to "jump the gun," to impound a car and obtain a warrant at the first indication that probable cause may exist, even if they are unsure if probable cause has been fully developed. Clearly the Courts in Witt and Smart, did not intend such a result.

Based on Officer Kineiry's observations and testimony, and the factual distinctions between those established at the suppression hearing and those in Smart, it is clear that the circumstances giving rise to probable cause were unforeseeable and spontaneous and the warrantless search of defendant's motor vehicle was valid. Accordingly, the trial court's factual findings and ruling were erroneous, contrary to law, and cannot stand. Therefore, the State's Motion for Leave to Appeal should be granted and the trial court order suppressing the evidence should be reversed in the interests of justice.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the State's Motion for Leave to Appeal be granted in the interests of justice.

Respectfully submitted,

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Prosecutor of Union County

s/Michele C. Buckley

By: MICHELE C. BUCKLEY
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MCB

FILED, Clerk of the Appellate Division, October 01, 2024, **A-003780-23**, **AMENDED**

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3780-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Appeal From An Interlocutory Order Of the Superior Court of New Jersey
v.	:	Criminal Division, Union County
JONATHAN E. LIGHTSEY,	:	Indictment No. 23-12-850-I
	:	Sat Below:
Defendant-Respondent.	:	Hon. Chanel J Hudson, J.S.C.
	:	

Your Honors:

This letter-brief and appendix are submitted on behalf of Defendant in lieu of a formal brief pursuant to R. 2:6-2(b).

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PROCEDURAL HISTORY

Defendant relies on the State's Procedural History. (Pb1-2)[1]

STATEMENT OF FACTS

Defendant relies on the State's Statement of Facts. (Pb2-5)

LEGAL ARGUMENT

POINT I

THE COURT SHOULD AFFIRM THE ORDER SUPPRESSING THE EVIDENCE BECAUSE THE MOTION COURT CORRECTLY FOUND THAT THE CIRCUMSTANCES GIVING RISE TO PROBABLE CAUSE WERE NEITHER UNFORESEEABLE NOR SPONTANEOUS AND THUS THAT THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT DID NOT JUSTIFY THE WARRANTLESS SEARCH OF DEFENDANT'S VEHICLE.

This case involves a straightforward application of the Supreme Court's recent holding in State v. Smart reaffirming that under the New Jersey Constitution, the automobile exception to the warrant requirement does not

[1] The following abbreviations are used:
1T – Motion Hearing (June 10, 2024)
2T – Motion Decision (June 24, 2024)
Pb – State's Brief
Pa – State's Appendix
Da – Defendant-Respondent's Appendix

permit a warrantless search of a vehicle unless "the circumstances giving rise to probable cause [were] 'unforeseeable and spontaneous.'" 253 N.J. 156, 171 (2023). Here, the trial court properly suppressed the evidence because it correctly found that the automobile exception to the warrant requirement did not apply. Specifically, the Court correctly reasoned that probable cause was not spontaneous and unforeseeable where multiple narcotics officers went to the target parking lot specifically to look for narcotics activity, they surveilled Jonathan Lightsey over the course of two hours after recognizing he was the registered owner of the suspect vehicle—known to police from a previous search warrant, and they conducted a Terry[2] stop of Lightsey on foot ten to fifteen feet away from his vehicle. (2T 17-21 to 18-3, 18-21 to 19-4) Thus, the trial court's order suppressing the evidence should be affirmed.

The federal and state constitutions both guarantee "the right of the people to be secure . . . against unreasonable searches or seizures." U.S. Const., amends. IV; N.J. Const. art. I, ¶ 7; Mapp. v. Ohio, 367 U.S. 643, 656-57 (1961) (applying the Fourth Amendment to the states via the Fourteenth Amendment). Pursuant to these protections, police generally must get a warrant before stopping and searching a person or their property. State v. Witt, 223 N.J. 409, 422 (2015). Warrantless stops and searches are presumptively

[2] Terry v. Ohio, 392 U.S. 1 (1968).

invalid. State v. Edmonds, 211 N.J. 117, 129 (2012). The State bears the burden of establishing by a preponderance of the evidence that any warrantless stop or search is justified by one of the "well-delineated exceptions to the warrant requirement." Id. at 128-30.

There is an automobile exception to the warrant requirement under both the federal and New Jersey constitutions. Under the federal constitution, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more. Pennsylvania v. Labron, 518 U.S. 938, 940 (1996). "[T]he federal automobile exception thus does not require 'a separate finding of exigency in addition to a finding of probable cause.'" State v. Smart, 253 N.J. at 169 (quoting Maryland v. Dyson, 527 U.S. 465, 467 (1999)). Additionally, "the federal constitution allows a police officer to conduct a warrantless search at headquarters merely because he could have done so on the side of the road." Witt, 223 N.J. at 448 (citing Chambers v. Maroney, 399 U.S. 42, 52 (1970)).

Under the New Jersey Constitution, however, "the automobile exception authorize[s] the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous." Id. at 447 (citing State v. Alston, 88 N.J. 211, 233 (1981)

(emphasis added). Additionally, the New Jersey Constitution does not permit a police officer to conduct a warrantless search of an automobile after towing it to headquarters merely because he could have done so on the side of the road; New Jersey's automobile exception is limited "to on-scene warrantless searches." Id. at 449; see also State v. Rodriguez, 459 N.J. Super. 13, 24 (App. Div. 2019).

The handful of published cases applying the "unforeseeable and spontaneous" standard of Witt draw a clear line. When police conduct a routine traffic stop and happen to come across probable cause that the vehicle contains contraband or evidence of an offense, that probable cause arose spontaneously and unforeseeably. State v. Baker, 478 N.J. Super. 116, 128-29 (App. Div. 2024); State v. Courtney, 478 N.J. Super. 81, 96 (App. Div.), leave to appeal denied, 257 N.J. 413 (2024); Rodriguez, 459 N.J. Super. at 25. Conversely, where "the investigative stop was deliberate, orchestrated, and wholly connected with the reason for the subsequent seizure of the evidence," probable cause did not arise spontaneously and unforeseeably. Smart, 253 N.J. at 172.

In Baker, police pulled the defendant over for motor vehicle infractions after observing his car "swerve several times out of the traffic lane and onto the shoulder of the roadway and then make an illegal U-turn." 478 N.J. Super.

at 122. While processing the defendant for an open traffic warrant, a police officer smelled burnt marijuana. Id. at 122-23. This Court held "that the finding of probable cause here, predicated on marijuana odor detected during a traffic stop, after a total of approximately eight minutes of interaction at defendant's driver-side window, arose in unforeseeable and spontaneous circumstances." Id. at 129.

In Courtney, defendants did not "dispute probable cause to search arose spontaneously and unforeseeably during the traffic stop." 478 N.J. Super. at 96. An officer pulled over the defendant for motor vehicle infractions after he "crossed over the solid, white line and" was "swerving within the right lane of travel." 478 N.J. Super. at 88. Upon approaching the defendant's car, the officer smelled alcohol and "saw a half-empty bottle of cognac on the passenger-side floor." Id. at 88-89. He ordered the driver to exit the vehicle and administered sobriety tests, which the driver failed. Id. at 89. Because the police conducted a routine traffic stop and developed probable cause that the vehicle contained an open container of alcohol through routine procedures to evaluate whether the driver was intoxicated, probable cause arose spontaneously and unforeseeably.

Finally, in Rodriguez, an officer pulled over a car with a broken headlight and air fresheners hanging from the rearview mirror. 459 N.J. Super.

at 16. Only after the stop did the officer detect the odor of marijuana and develop probable cause that there was contraband in the car. Id. at 17. Thus, the "unforeseeable and spontaneous" requirement was met. Id. at 25.

In contrast, in Smart, the motor vehicle stop was conducted as part of a narcotics investigation that originated with a tip from a confidential informant and ended with a lengthy surveillance of Kyle Smart. 253 N.J. at 160. Importantly, while the CI had provided police information a month prior to the stop that the defendant was a drug dealer who used his vehicle to traffic drugs, the police were not actively looking for the defendant's car on that date; Officer Taranto was simply conducting "surveillance in front of a condominium complex located in an area known to him as a place where frequent narcotics transactions and other criminal activity occurred" and just happened to observe the defendant's car. Ibid. After recognizing Smart's car, connecting it with the information Taranto had about Smart from the CI, and suspecting Smart may be dealing drugs from the car, Taranto and another officer then "surveilled defendant collectively for forty-seven minutes before the stop." Id. at 172. Through their surveillance, the officers developed reasonable suspicion that Smart had engaged in drug transactions based on his "disappearing into the backyard of the residence, reemerging with another person, and then reentering the GMC shortly thereafter." Id. at 172. The

officers stopped Smart's car, patted him down, and called for canine unit to conduct a sniff test on the car after the pat down yielded nothing. Ibid.

The Supreme Court found the circumstances giving rise to probable cause were not unforeseeable because the police "had invested almost two hours investigating, surveilling, and utilizing five officers" and thus "reasonably anticipated and expected they would find drugs in the GMC" at the time of the motor vehicle stop. Ibid. The Court also held that "the circumstances giving rise to probable cause were anything but spontaneous" because "they did not develop . . . suddenly or rapidly" but rather "unfolded over almost two hours." Id. at 173. Thus, the Court found that the automobile exception to the warrant requirement did not apply and affirmed the trial court order suppressing the evidence. Id. at 174.

The stop of Lightsey in this case is unlike the routine traffic stops of Baker, Courtney, and Rodriguez, but it closely resembles the two-hour surveillance of Smart. Just like Officer Taranto in Smart went to the condominium complex because it was known for drug transactions, 253 N.J. at 160, in this case Officers Kiniery, Fonseca, and Maglione went to the Wawa parking lot specifically "because it was known as an open air drug market" and "they went to that area with the expectation that there may be drug activity taking place." (2T20-1 to 7) Taranto was not specifically looking for Kyle

Smart's vehicle, just as Kiniery was not specifically looking for Lightsey's vehicle. Ibid. Taranto began surveilling Smart's vehicle when he recognized it as matching the description of the vehicle involved in drug deals as described by a CI, and a database search of the registered owner led Taranto to believe that Smart was the drug dealer described by the CI. Id. at 160-61. Likewise, shortly after Kiniery began observing Lightsey's vehicle, he ran its plate and realized the car belonged to Lightsey, a suspected drug dealer. (1T 42-5 to 16) In both cases, what followed was lengthy surveillance of the defendants and their vehicles for almost two hours. Id. at 172-73. (1T 35-14 to 36-3; 2T20-8 13; Da26)

Just as the circumstances in Smart giving rise to probable cause were not unforeseeable because the police "had invested almost two hours investigating, surveilling, and utilizing five officers," id. at 172, the police here "surveilled [Lightsey's] vehicle for over two hours," and called for backup such that five officers were on scene by the time of the third suspected transaction and seven were on scene at the time of Lightsey's arrest. (2T 18-22 to 19-8) Additionally, just like the circumstances giving rise to probable cause in Smart "were anything but spontaneous" because "they did not develop . . . suddenly or rapidly" but rather "unfolded over almost two hours," id. at 173, the circumstances here also unfolded over two hours. (1T 35-14 to 36-3; 2T 18-22

to 19-8; Da26) Indeed, because of the length of time that elapsed, the motion court found that officers could have used the time to secure a warrant for the vehicle—a fact conceded by the State below. (1T 78-15 to 23; 2T20-16 to 19) Thus, the motion court correctly concluded that, just as in Smart, probable cause to search Lightsey's vehicle did not arise spontaneously and unforeseeably. (2T 18-19 to 21)

In challenging the motion court's decision, the State first takes issue with the following factual finding by the Court:

> The officers went to that specific location because it was known as an open air drug market. They had got information that they believed that Mr. Lightsey was the occupant or the driver of that car from somebody that they knew to be a drug addict, and they went to that area with the expectation that there may be drug activity taking place.
>
> [(2T 19-25 to 20-7; Pb12-13)]

Specifically, the State notes, "[c]ontrary to the court's findings, the officers had no advance information of defendant's location, car or activities prior to observing the Infiniti in the Wawa parking lot." (Pb13) While the State is correct that Kiniery did not receive information that Lightsey would be in the Wawa parking lot and thus was not specifically seeking to encounter Lightsey there, this factual discrepancy is immaterial to the overall merit of the motion court's decision or the analogy to Smart. Officer Taranto in Smart also had no

advance notice that Smart would be in the parking lot in front of the condominium that Taranto was surveilling; Taranto, like Kiniery, simply went to an area known for drug trafficking. 253 N.J. at 160. (1T 7-6 to 19) It was because these respective areas were known for drug trafficking that both Kiniery and Taranto reasonably hoped to detect drug activity—not due to any information received about any persons there or activity occurring at that moment. Ibid. (1T 7-6 to 19; Pb13)

Separately, the State seeks to distinguish Smart from this case by arguing that here, "officers did not have any information about defendant before they observed the silver Infiniti in the parking lot" and "there was no prior police surveillance or information provided by concerned citizens or confidential informants about defendant's involvement in drug dealing." (Pb15) This is incorrect. Kiniery testified that the Elizabeth Police Department had previously conducted an investigation into Lightsey and obtained a search warrant for him. (2T 22-7 to 10) In fact, Lightsey was "well-known to [Officers Kiniery, Fonseca, and Maganinho] from prior narcotics investigations." (Da23) While Kiniery had never met Lightsey personally, Kiniery knew of Lightsey from these investigations. (1T 22-5 to 6) Thus, upon recognizing the vehicles surveilled, both Kiniery and Taranto connected the vehicles with prior information they had that the operators of the vehicles were

narcotics dealers; the fact that the source of this information was different in each case—the Elizabeth police department's prior search warrant for Lightsey as opposed to the CI tip for Smart—is immaterial.

The State also argues that Kiniery was on routine patrol; however, Kiniery was a narcotics officer who went to the Wawa parking lot that was known for drug dealing specifically "looking for suspicious narcotics activity." (1T 7-4 to 19) Likewise, Taranto in Smart went to the condominium complex known for narcotics activity looking to intercept drug activity. 253 N.J. at 160.

The State further argues that "the record did not support the trial court's finding that there were numerous officers on scene which would have allowed them to approach defendant after observing the first hand to hand transaction." (Pb14) This is a misreading of the court's finding. The court's finding to which the State is referring reads in full as follows:

> the officers sat there for two or more hours, or almost two hours and watched the defendant allegedly engage in three separate hand-to-hand transactions over a two-hour period, despite the fact that there were numerous officers on scene. Had the officers approached the vehicle when they first observed the hand to hand transaction, it could have been considered unforeseen and spontaneous. However, the time in which the first transaction occurred until the time the defendant was arrested could have used to secure a warrant for the vehicle.
>
> [(2T 20-9 to 19)]

The court's counterfactual that the circumstances could have been considered spontaneous if the officers had approached the vehicle after the first transaction does not in any way suggest that that court believed the number of officers on scene at that time "would have allowed them to approach defendant after observing the first hand to hand transaction." (Pb14) The court was simply engaging in a thought experiment of what might have been considered spontaneous, not admonishing the officers for not approaching Lightsey after the first suspected transaction. The criticism the court levied at the officers was their failing to obtain a warrant over the two-hour surveillance period—not their to approach Lightsey after the first transaction. Thus, viewed in context, the State's quibbling with the motion court's factual findings is immaterial and does not vitiate the validity of the court's holding that this case is analogous to Smart.

Beyond Smart itself, two post-Smart cases by this Court demonstrate that this case falls squarely within the category of circumstances under which Smart commands suppression of the evidence: State v. Pittman, No. A-2309-20, 2023 WL 6930025 (N.J. Super. Ct. App. Div. Oct. 19, 2023); and State v. Martinez, No. A-1063-21, 2023 WL 6460945 (N.J. Super. Ct. App. Div. Oct. 4, 2023). (Da1-21)

In Pittman, as in this case, the officers were driving in an unmarked car

on "proactive patrol", "looking for suspicious activity" including drug deals "in progress," specifically surveying parking lots known for drug transactions. 2023 WL 6930025 at *1. (1T 7-4 to 19) The officers' attention was drawn to Pittman's car in that case because they knew the defendant to be involved in narcotics distribution, ibid., just as the officers' attention was drawn to Lightsey's car because they knew the woman speaking to the driver was a narcotics user and then ran Lightsey's plate, recognizing his name as a known narcotics dealer. (1T 16-4 to 17-14, 42-5 to 12; Da23) Just as the officers surveilled Lightsey for two hours and observed what they believed to be several narcotics transactions, the officers then surveilled Pittman's car for an hour and ten minutes, observing what they believed to be a narcotics transaction. Id. at *2. (1T 35-14 to 36-3; 2T 18-21 to 23)

The officers ordered Pittman out of the vehicle and ordered a canine sniff when they did not see any drugs in plain view. Ibid. This Court found Pittman on all fours with Smart, as "it was the narcotics detective's 'suspicions of ... [d]efendant's narcotics activity' which prompted the lengthy surveillance of defendant's car, and formed the basis of the stop . . . and the ultimate search of the car." Id. at *4. Thus, the court concluded "that the circumstances giving rise to probable cause here were not 'unforeseeable and spontaneous' but were instead, as in Smart, 'deliberate, orchestrated, and wholly connected with the

reason for the subsequent seizure of the evidence.'" Id. at *5 (quoting 253 N.J. at 172.) That conclusion applies equally to the facts of this case.

In Martinez, officers similarly surveilled the defendant's car based on a tip of his drug activity and observed what they thought to be a drug transaction. 2023 WL 6460945 at *6. The Court found that the tip, surveillance of Martinez, and surveillance of the suspected drug transaction "demonstrate the circumstances that gave rise to probable cause were foreseeable." Ibid. Thus, "police reasonably anticipated finding drugs in defendant's vehicle" and "should have impounded the vehicle and secured a warrant." Ibid. Likewise, in this case, the police surveilled defendant's vehicle for nearly two hours after they suspected him of drug activity based on an interaction with a known drug user and observed several suspected drug transactions over that period.

Despite the fact that the result in Lightsey's case is controlled by Smart, the State attempts to invoke policy considerations by arguing that the motion court's reasoning (1) "places an undue burden on the 'investigatory demands of law enforcement;'" (2) "discounts the dangerousness of the situation;" and (3) "applied to similar future circumstances would require law enforcement officers to 'jump the gun.'" (Pb16-18) (quoting Witt, 223 N.J. at 447). In support of these ominous portents the State cites the same single sentence from the motion court's decision that it misunderstood earlier: "Had the officers

approached the vehicle when they first observed the hand to hand transaction, it could have been considered unforeseen and spontaneous." (Pb16; 2T 20-13 to 16) But the motion court was not arguing that the police should have approached Lightsey's vehicle after the first transaction; the court was simply recognizing that under the circumstances of the lengthy two hour surveillance in this case, the police could have and should have gotten a warrant. (2T 20-8 to 19)

More importantly, our Supreme Court already exhaustively took into consideration all relevant policy considerations in adopting the "unforeseeable and spontaneous" standard in Witt. Examining the pre-Witt standard for the automobile exception—which had the additional requirement of exigency—the Witt Court "expressed concerns about the dangers to police officers and a car's driver and occupants resulting from extended stops 'on the sides of heavily-traveled highways and roads' as an officer 'engage[s] in seeking a telephonic warrant.'" 223 N.J. at 435 (quoting the Report of the Supreme Court Special Committee on Telephonic and Electronic Search Warrants 17 (2010)). Citing news reports of "cars and trucks crashing into police officers . . . positioned on the shoulders of our highways," the Court noted that "[p]rolonged encounters on the shoulder of a crowded highway—even within the range of 30 to 45 minutes—may pose an unacceptable risk of serious bodily injury and death."

Id. at 441-42. The Court was also concerned with whether the exigency requirement was workable: "For a law enforcement officer responding to rapidly evolving events on the side of a road, the exigency formula requires the processing of such confounding and speculative information that we cannot expect uniform and consistent decision-making." Id. at 444 (emphasis added). These concerns led the Witt court to abandon the exigency requirement. Id. at 414-15.

After the Witt Court jettisoned exigency, the Court adopted the "unforeseeable and spontaneous" requirement under Article I, Paragraph 7 of our State Constitution. Id. at 447. The Court adopted this standard against the backdrop of all the policy concerns that had led it to abandon the exigency requirement, holding that the "unforeseeable and spontaneous" requirement "properly balances the individual's privacy and liberty interests and law enforcement's investigatory demands" and "does not place an undue burden on law enforcement." Ibid.

The Smart Court reiterated Witt's policy conclusions in adhering to and applying the "unforeseeable and spontaneous" in the exact manner the motion court did here. 253 N.J. at 171. The Smart Court rejected the State's argument that the Witt test should look at whether the police had probable cause "well in advance of the search," holding that this would be a departure from Witt and

that "there is no justification, let alone special justification, to part ways with Witt." Id. at 174. Thus, our Court has made clear that the Smart standard for evaluating spontaneity and unforeseeability does not places an undue burden on the investigatory demands of law enforcement or place officers in danger.[3]

The State's misplaced policy concerns cannot avoid the conclusion that this case presents a run-of-the-mill-application of Smart under which suppression was required. In this case, like in Smart, "the circumstances giving rise to probable cause were anything but spontaneous" because they "unfolded over almost two hours" invested by the police "in investigating, surveilling, and utilizing five officers." 253 N.J. at 172-73. (2T 19-15 to 20-19) The lack of spontaneity and unforseeability compels the inevitable conclusion that this search was not justified by the automobile exception to the warrant requirement. The motion court correctly order the evidence suppressed, and this Court should accordingly affirm the motion court's order suppressing the evidence.

[3] It is noteworthy that the danger concerns articulated in Witt focused entirely on the danger of roadside motor vehicle stops. These concerns are completely absent here, as Lightsey's car was parked in a parking lot and never observed moving.

CONCLUSION

For the aforementioned reasons, this Court should affirm the order of the motion court suppressing the evidence.

Respectfully submitted,

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