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Supreme Court of New Jersey

DOCKET NO. 089786

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Certification Granted to the Superior Court of New Jersey, Appellate Division.
v.	:	Sat Below:
SHAWN M. FENIMORE, A/K/A SHAWN FENIMORE,	:	Hon. Michael J. Haas, J.A.D. Hon. Arnold L. Natali Jr., J.A.D.
Defendant-Petitioner.	:	

SUPPLEMENTAL BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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February 5, 2025

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TABLE TO APPENDIX[1]

[1] Page eleven from the Appellate Division opinion was omitted from defendant's supplemental appendix to this Court. The State has therefore included the page in its supplemental appendix to complete the opinion. The State also has included the unpublished cases cited at (Psb44 n.12) of this supplemental brief, in accordance with Rule 1:36-3.

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"Dsa" refers to the appendix to defendant's supplemental brief.
"Dsb" refers to defendant's supplemental brief.
"Psa" refers to the appendix to the State's supplemental brief.
"Psb" refers to the State's supplemental brief.
"1T" refers to pretrial-motion proceedings on February 4, 2022.
"2T" refers to plea proceedings on May 23, 2022.
"3T" refers to sentencing proceedings on February 10, 2023.

PRELIMINARY STATEMENT

This case presents four questions regarding a driver whose car was searched after he voluntarily pulled his car into a police station lot, parked, immediately exhibited multiple signs of drug impairment, and was arrested: (1) did the police have probable cause to suspect the impaired driver's car to contain evidence of drug activity?; (2) does the automobile exception apply to parked cars?; (3) did the probable cause arise unforeseeably and spontaneously?; and (4) alternatively, could the police search of the driver's car be objectively considered incident to his arrest for driving while intoxicated?

This case arose because defendant chose to drive a car, while intoxicated and impaired, to a police station to be interviewed about a harassment complaint. Upon his arrival, an officer saw him pull in and exit from the driver's door, stumble over his feet, and almost fall into a wall when trying to enter the station's front entrance. During the ensuing interview for the harassment complaint, the officer also noticed a fresh track mark on defendant's arm. And based on his years of law-enforcement experience, the officer recognized that the fresh track mark, defendant's slow and raspy voice, pinpoint eyes, and "white stuff" on the side of his mouth were signs of recent narcotics use.

To confirm that well-grounded suspicion, the officer had defendant

perform sobriety tests. Defendant failed them, confirming that he was intoxicated. As a result, defendant was arrested for driving while intoxicated (DWI).

The same circumstances that provided probable cause for defendant's arrest also provided probable cause to believe that there was evidence of defendant's drug use, such as additional narcotics or other drug paraphernalia, in the car that he had just been seen operating. These circumstances also arose unforeseeably and spontaneously. Indeed, the circumstances giving rise to probable cause swiftly unfolded during an unplanned DWI investigation and did not exist prior to defendant's arrival to the station. Because both prongs of the automobile exception had been met, the trial judge properly found that the car search was justified under the automobile exception.

Contrary to defendant's assertion, the automobile exception does not solely apply to roadside searches. It is a long-standing, well-settled principle that the automobile exception applies to parked cars; and, whether the vehicle was parked or moving at the time of the encounter, this Court has uniformly applied the same automobile-exception standard to either scenario, that was in effect at the time. This well-settled principle should be applied to the car defendant parked at the police station here, which had yet to be impounded. While this Court in Witt drew a line between on-scene and post-impoundment

searches, disallowing the latter in the automobile-exception context, it did not draw a line between roadside stops and every other police encounter.

Because the circumstances giving rise to probable cause arose unforeseeably and spontaneously, the police permissibly searched defendant's car under the automobile exception. The car search was also justified under the search-incident-to-arrest exception—as recognized by the United States Supreme Court in Arizona v. Gant, it was reasonable to believe under the totality of circumstances that evidence relevant to defendant's DWI arrest would be found in the car he had just been seen operating. This Court should affirm the Appellate Division's well-reasoned and thoughtful opinion.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On August 25, 2021, a Salem County Grand Jury returned Indictment No. 21-08-0541-I, charging defendant Shawn Fenimore and co-defendant Nicholas Luzzo with crimes related to drugs and a loaded handgun that were seized during a car search following Fenimore's arrest for driving while intoxicated (DWI). (Dsa1 to 3). Defendant was charged with three crimes: second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1), under Count One; third-degree possession of a controlled dangerous substance (CDS), in violation of N.J.S.A. 2C:35-10(a)(1), under Count Two; and fourth-degree unlawful possession of a large-capacity

magazine, in violation of N.J.S.A. 2C:39-3(j), under Count Three.[2] (Dsa1 to 2).

On June 16, 2021, defendant filed a motion to suppress. After an evidentiary hearing on February 4, 2022, the Honorable Linda L. Lawhun, P.J.S.C., denied the motion, finding the search was lawful under the automobile exception. (1T116-17 to 121-14; Dsa6).

On May 23, 2022, defendant entered into a global plea agreement for Salem County Indictment Nos. 21-08-0541-I and 21-03-0256-I. (Dsa7; 2T3-2 to 4-13). As for Indictment No. 21-08-0541-I, relating to this case, defendant pleaded guilty to second-degree unlawful possession of the handgun (Count One) in exchange for the State's sentencing recommendation of five years in prison, with only one year of mandatory parole ineligibility, following its filing of a Graves Act waiver under N.J.S.A. 2C:43-6.2. (Dsa9; 2T3-2 to 6-5). As for Indictment No. 21-03-0256-I, defendant pleaded guilty to third-degree possession of CDS in exchange for the State's recommendation of a concurrent three-year sentence.[3] (Dsa4; Dsa9; 2T3-2 to 6-5). The State also agreed to

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[2] Co-defendant Luzzo was also charged with unlawful possession of the handgun (Count Four), unlawful possession of the large-capacity magazine (Count Five), and a second-degree certain persons offense (Count Six). (Dsa2 to 3). Those charges were dismissed on October 17, 2022, after defendant pleaded guilty to unlawfully possessing the handgun.

[3] This CDS offense occurred before the car search. (2T11-15 to 12-18; Psb13).

dismiss defendant's remaining charges, and to recommend his sentences run concurrently with another pending fourth-degree theft case. (Dsa9; 2T13-14 to 14-3; 3T14-15 to 20).

On January 12, 2023, the State filed a motion for a Graves Act waiver, which Judge Lawhun granted at sentencing on February 10, 2023. (3T4-5 to 14; 3T13-9 to 14). Defendant was then sentenced in accordance with the plea agreement. (3T13-10 to 16-24; Dsa13 to 18). On the same date, defendant also pleaded guilty to his DWI offense and was sentenced to the mandatory minimum penalty without jail. (3T4-22 to 9-16; 3T14-25 to 15-7; Dsa13).

On August 15, 2023, defendant filed a Notice of Appeal in the Appellate Division, solely challenging his conviction under Indictment No. 21-08-0541-I and the denial of his motion to suppress. (Dsa19 to 23).

On July 26, 2024, the Appellate Division, in an unpublished opinion, affirmed defendant's convictions and the denial of his suppression motion, upholding the car search under the automobile exception. (Psa1; Dsa36 to 50; Dsa56 to 70).

On August 21, 2024, defendant filed a Petition for Certification. This Court granted the petition on October 29, 2024. (Dsa71).

COUNTERSTATEMENT OF FACTS

This case stems from the seizure of a loaded handgun, found in a car that defendant had driven, while intoxicated and impaired, to a police station for questioning. Following his arrest for DWI, the police searched the car and discovered the handgun inside the passenger compartment, along with folds of heroin and a hypodermic needle.

A. The motion-to-suppress hearing.

The following facts are derived from Trooper Daniel Radetich's motion testimony and the judge's fact-findings. On June 2, 2021, Trooper Radetich was investigating a harassment complaint against defendant. (1T5-16 to 6-18). In reporting the complaint, the female victim showed the police text messages previously sent by defendant, including ones noting that he had hit someone with his car while "high." (1T98-6 to 101-14).

Trooper Radetich called defendant's home phone number and left a message with defendant's mother. (1T5-16 to 7-12; 1T39-25 to 40-1; 1T42-2 to 21; 1T85-6 to 11). When defendant called him back, Radetich asked defendant to come down to the station so he could provide a statement to explain his side of the story.[4] (1T5-16 to 7-12; 1T39-25 to 40-1; 1T40-23 to

[4] The Computer Aided Dispatch (CAD) abstract showed an entry at 6:04 p.m. (Dsa24; Dsa26).

24; 1T85-6 to 11; 1T97-18 to 24). While speaking with defendant, Radetich noted that defendant's voice was "raspy" and that he was "slurring his words." (1T86-2 to 6). After hanging up the phone, Radetich told other troopers, "I think he's intoxicated, possibly." (1T86-2 to 6).

Defendant agreed to speak with Trooper Radetich and chose to drive himself to the station, instead of accepting Radetich's offer to pick him up from work. (1T6-19 to 8-19; 1T39-25 to 41-4; 1T101-21 to 102-6). When defendant arrived at the station around 8:30 p.m., Radetich was inside the lobby and saw defendant pull into the parking lot and exit from the driver's door. (1T7-20 to 9-19; 1T66-21 to 67-2; 1T84-1 to 84-22; 1T87-11 to 88-14). As defendant was walking toward the station's front entrance, Radetich saw defendant "stumbl[e] over his own feet" and appear to fall, or almost fall, into the station wall right next to the door. (1T7-20 to 9-19).

Defendant then walked into the station and said that he was there to speak with Radetich, who brought defendant into an interview room. (1T7-20 to 9-25). There, Radetich read defendant his rights and "started talking about the reason that [he] was investigating [him] at that time"—the harassment case. (1T9-25 to 11-11; 1T103-24 to 104-7). While Radetich was doing so, he noted that defendant's voice was "slow" and "raspy," his eyes were "pinpoint," and he was "slouched in his chair." (1T11-7 to 14). He also noticed that

defendant had a "fresh track mark" (i.e., "an injection site, from a needle") on his forearm, which he had seen before during his six years as a State Trooper. (1T11-7 to 17; 1T102-11 to 103-5). Defendant also had "white stuff" on the side of his mouth indicating that his mouth was dry, which Radetich also recognized as a sign of narcotic use. (1T97-4 to 11).

Based on these observations, and Trooper Radetich's six years of law-enforcement experience, during which he had encountered people under the influence of drugs and alcohol, he believed that defendant may have been under the influence of a narcotic. (1T4-21 to 5-19; 1T11-7 to 12-11). Radetich asked defendant about the fresh track mark and whether defendant had taken anything; but defendant stated, "I'm just tired." (1T11-12 to 15-16). Nonetheless, because Radetich "did[not] feel confident with [defendant] leaving the station," believing that he was under the influence, he conducted field-sobriety tests—the Horizontal Gaze Nystagmus (HGN) test, the walk-and-turn test, and the one-leg test—with the assistance of another trooper. (1T15-20 to 19-15; 1T89-4 to 22; Dsa32).

Trooper Radetich had conducted more than twenty field-sobriety tests in his experience. (1T68-1 to 7). He was also certified as a Drug Recognition Expert (DRE). (1T77-3 to 4). In watching defendant perform the tests, he saw defendant fail the one-leg stand, swaying from side to side when he picked up

his foot and having to place it back down on the ground. (1T18-12 to 19-15). He also saw defendant fail the walk-and-turn test, losing his balance at the starting position and being unable to walk heel-to-toe. (1T15-20 to 18-14). Though Radetich did not notice anything odd with the HGN test, he explained that was "normal with a narcotic[.]" (1T15-20 to 19-15; 1T89-4 to 13).

Defendant was arrested for driving while intoxicated based on Trooper Radetich's observations of defendant's arrival driving into the station, his intoxicated behavior during the interview, and his failed field-sobriety tests. (1T19-16 to 20). Troopers, including Radetich, then searched defendant's car for intoxicants, in places where a driver or passenger of the car could reach and intoxicants could be located. (1T19-16 to 20-15; 1T30-19 to 31-9; 1T89-23 to 90-12).

Trooper Radetich believed that the probable cause to arrest defendant for DWI also provided probable cause to search the vehicle defendant had been operating for intoxicants. (1T72-2 to 24). In addition to the foregoing circumstances, defendant's violent, hysterical reaction to being arrested also caused Radetich to believe that there was something in the car, or that defendant "was afraid that there was something" in the car. (1T65-3 to 18).

The car had a front passenger—co-defendant Luzzo—whom the troopers

ordered out of the car.[5] (1T20-19 to 28-1). The officers then began the search in the front-passenger area, finding four wax folds of heroin, labeled "Jackpot," and a needle in the center console. (1T27-25 to 29-1; 1T31-6 to 18; 1T90-13 to 91-3).

The officers also searched the rear-passenger area and found a handgun, wrapped inside a towel, in a plastic bag. (Dsa32; 1T29-2 to 15; 1T31-23 to 6; 1T91-4 to 11). After feeling a metal object when moving the towel, (Dsa32; 1T91-12 to 14), Radetich said, "I knew it," upon finding the gun. (1T29-2 to 15). The gun was loaded with at least sixteen rounds. (1T30-9 to 15).

In the rear-compartment area of the car, which was a Jeep Grand Cherokee, the officers also found items that they suspected were stolen—including seven iPhones and four car keys for different makes of cars—two bolt cutters, and an item used to break windows. (1T29-15 to 23; Dsa32).

After the car search, Detective Radetich spoke with defendant, who again waived his rights before being interviewed. (1T32-19 to 33-18; 1T37-21 to 39-15). Defendant disclaimed ownership of the gun in the bag, which he brought up on his own, without Radetich mentioning to him that one had been

[5] Luzzo was sleeping and "difficult to awaken." (Dsa32). He appeared disoriented, did not know where he was, and "struggled to keep his eyes open." Ibid. Like defendant, Luzzo's speech was "raspy, slow, and slurred" and his pupils were "pinpoint." Ibid.

found in the car. Defendant claimed that Luzzo had brought a black book bag into the car and claimed that he did not know that a gun was in the bag. (1T34-3 to 36-10; 1T37-21 to 44-20; 1T53-24 to 54-22; 1T56-22 to 58-13). After Radetich asked defendant what in the car belonged to him, defendant admitted that he owned work clothes in a plastic bag and the heroin found in the center console. (1T33-21 to 35-21; 1T45-15 to 48-21; 1T50-20 to 52-21). He also admitted that he used heroin that morning, though he denied using it before coming to the police station. (1T46-15 to 17; 1T48-22 to 49-14).

Neither Luzzo nor defendant claimed ownership of the gun. (1T55-6 to 58-13). They were therefore both charged with unlawfully possessing the gun. (1T65-24 to 66-10). Defendant was only indicted with crimes related to the drugs, loaded handgun, and large-capacity magazine seized from the passenger area, not the items seized from the rear-compartment area. (Dsa1 to 3). Though he was charged with a disorderly persons offense for possessing burglary tools, it was dismissed at sentencing. (Dsa13).

1. Motion judge's ruling.

Following Trooper Radetich's testimony, the judge denied defendant's motion to suppress. (1T116-17 to 121-14). Based on Radetich's testimony, the judge found that Radetich's "observations alone were sufficient for there to be probable cause to believe . . . defendant had operated [his] motor vehicle

while under the influence." (1T118-10 to 15; 1T121-1 to 9). The judge also found that the search of the car after defendant's DWI arrest was justified under the automobile exception, even though the car was going to be impounded under John's Law, N.J.S.A. 39:4-50.23, and the car was parked in a police-station parking lot. (1T115-17 to 120-4).

The judge found that defendant parking his car at the State Police barracks and arriving under the influence was "totally dissimilar" from a warrantless search of a car in a private driveway. (1T116-17 to 117-16). And the judge noted that there are cases applying the automobile exception to parked cars, such as those in store parking lots, and not just those stopped on the side of the roadway—though "[m]ost of the case law concerns roadway stops." (1T117-9 to 118-4).

The judge rejected defendant's argument that the automobile exception's spontaneity-and-unforeseeability requirement was not met due to defendant being invited to the police station to discuss the harassment incident, or because defendant parked his car in the station's parking lot. The judge found that defendant's arrival at the station under the influence was what was "spontaneous and unforeseeable," and ruled that "the police troopers were justified in searching the vehicle without a search warrant" and seizing the gun contained inside the plastic bag. (1T116-17 to 118-4; 1T119-23 to 120-13).

B. Defendant's guilty pleas.

On May 23, 2022, defendant entered into a global plea agreement for Indictment Nos. 21-08-0541-I and 21-03-0256-I. (2T3-2 to 13-8; Dsa7 to 12). As to Indictment No. 21-08-0541-I, defendant pleaded guilty to second-degree unlawful possession of the loaded handgun that was seized from his car and admitted the following facts under oath: that he was aware of the firearm seized from his vehicle and that he did not have a permit for it.[6] (2T4-15 to 17; 2T10-17 to 11-10).

As to Indictment No. 21-03-0256-I, defendant pleaded guilty as charged to third-degree unlawful possession of CDS, admitting that he illegally possessed heroin in Pennsgrove Borough on August 21, 2019, and January 13, 2020. (2T11-15 to 12-18). This drug charge did not stem from the car search on June 2, 2021, and is thus unrelated to the denial of the motion to suppress that defendant is challenging on this appeal.

On February 10, 2023, before being sentenced, defendant also pleaded guilty to driving while intoxicated to the police station on June 2, 2021. (3T4-22 to 9-16; Dsa13). Defendant admitted, under oath, that before driving to the police barracks that day, he had used a narcotic that affected his ability to

[6] For defendant's factual basis, defense counsel mixed up which indictment numbers pertained to which charges. Compare (2T10-17 to 13-8) with (Dsa7).

safely operate the car he drove there. (3T5-24 to 6-1; 3T8-2 to 9-16).

C. The Appellate Division opinion.

On July 26, 2024, the Appellate Division affirmed defendant's convictions and the denial of the motion to suppress. (Dsa36 to 70; Psa1). Like the motion judge, the Appellate Division rejected defendant's arguments and held that the judge "correctly determined police had probable cause to believe evidence of a crime was present in defendant's vehicle which arose spontaneously and unforeseeably, allowing police to conduct a warrantless on-scene search of defendant's vehicle." (Psa1; Dsa37 to 38; Dsa42 to 45).

The Appellate Division concluded, after going through the history of the automobile exception and principles established in State v. Witt, 223 N.J. 409 (2015), (Dsa47 to 50; Dsa56 to 59), that the officers lawfully searched defendant's vehicle under the automobile exception, and rejected defendant's argument that the search was illegal because it took place in a police parking lot while the vehicle was awaiting impoundment. (Dsa59 to 61). The Appellate Division further held that defendant's interpretation that Witt restricted the automobile exception solely to roadside stops was belied by the precise language of Witt itself, which, considering the decision in its entirety, did not hold such. (Dsa59 to 60).

The Appellate Division noted that, if defendant's interpretation of Witt

were correct, this Court would have overruled cases in which the automobile exception was applied to parked vehicles, and the panel declined to conclude that this Court would have done so only implicitly. (Dsa59 to 60). Instead, the Appellate Division explained this Court explicitly stated in Witt that its holding "eliminate[d] . . . the fear that a car parked in the home driveway of vacationing owners would be a fair target of a warrantless search if the police had probable cause to believe the vehicle contained drugs," because "if the circumstances giving rise to probable cause were foreseeable and not spontaneous, the warrant requirement applies." (Dsa60) (quoting Witt, 223 N.J. at 447-48) (emphasis added). The Appellate Division interpreted "the clear import of such language to be [that] if the circumstances giving rise to probable cause were unforeseeable and spontaneous, the parked car in [Witt]'s hypothetical may be searched without a warrant." (Dsa60).

Importantly, noting that the police did not transport defendant's vehicle to the station, but searched it at the scene of the encounter, the Appellate Division reasoned that "the exigencies inherent to an on-scene search had not dissipated and [that] the search of defendant's vehicle in an unsecured parking lot prior to impoundment fell squarely within the parameters articulated in Witt and [the Appellate Division's recent decision in State v.] Courtney[,]" 478 N.J. Super. 81 (App. Div. 2024), which held that vehicles subject to

impoundment under John's Law are not categorically excluded from an on-scene search under the automobile exception. (Dsa57 to 58; Dsa60 to 62).

The Appellate Division emphasized that defendant's vehicle still was mobile since the vehicle had yet to be towed and impounded, and that there was an unsecured passenger in defendant's vehicle, meaning "the exigencies inherent to on-scene searches, such as the mobility of the vehicle and destruction of evidence, were present." (Dsa61). And the panel held that this conclusion was consistent with Witt's "'part from federal jurisprudence' precluding an officer from conducting 'a warrantless search at headquarters merely because he could have done so on the side of the road.'" (Dsa61 to 62) (citing Witt, 223 N.J. at 448-49). The Appellate Division explained that Witt's use of "headquarters" was a reference to a police impound lot, not the parking lot of a police station, "as when a vehicle is towed and impounded, it is no longer mobile and the inherent exigencies supporting an on-scene search [thereby] dissipate." Ibid.

As for defendant's argument that the car search lacked probable cause, the panel again disagreed. (Dsa62 to 67; Psa1). The Appellate Division held that "[i]t was evident to Trooper Radetich, based on his observations, including defendant's 'fresh' injection mark, [that] defendant appeared to be under the influence of drugs, had recently consumed a controlled dangerous

substance, and had recently driven his vehicle for an unknown period of time." (Dsa63 to 66). The Appellate Division further noted that "[t]hese facts amply supported Trooper Radetich's 'reasonable well-ground suspicion' [that] defendant's vehicle contained evidence of drug use," consistent with State v. Irelan, 375 N.J. Super. 100 (App. Div. 2005), which the court pointed out "ha[d] remained good law for nearly twenty years." (Dsa65 to 67).

The Appellate Division was also "not persuaded" by defendant's argument that such probable cause did not arise unforeseeably and spontaneously within the meaning of the automobile exception. (Dsa67 to 70). Distinguishing State v. Smart, 253 N.J. 156 (2023), the panel found that, while defendant's arrival at the police station was not spontaneous, his arrival under the influence, and Trooper Radetich's belief that there was evidence of drug use in defendant's vehicle, occurred spontaneously and unforeseeably based on the totality of this case's circumstances. (Dsa69 to 70).

In light of the Appellate Division's holding that the search of defendant's vehicle was proper under the automobile exception, the court found it unnecessary to address the substantive or procedural propriety of the State's alternative argument that the search was justified under the search-incident-to-arrest exception, leaving the question undecided. (Dsa70). The case is now before this Court on grant of defendant's Petition for Certification.

LEGAL ARGUMENT

POINT I

THE APPELLATE DIVISION CORRECTLY UPHELD THE SEARCH OF DEFENDANT'S CAR THAT HE DROVE TO THE POLICE STATION.

The Appellate Division, in a well-reasoned opinion that was fully supported by the record, properly affirmed the denial of defendant's motion to suppress. It is a well-settled principle that the automobile exception applies to parked cars. And for decades, whether a vehicle was parked or moving at the time of the encounter, this Court has applied the same automobile-exception standard, that was in effect at the time, to either scenario. There is no reason for this Court to change course.

Here, because the circumstances giving rise to probable cause arose unforeseeably and spontaneously, the car search was appropriate under the automobile exception as set forth in this Court's precedent. Accordingly, this Court should affirm the judgment of the Appellate Division, upholding the denial of defendant's motion to suppress under the automobile exception.

The car search was also permissible under the search-incident-to-arrest exception established in Arizona v. Gant, 556 U.S. 332, 343 (2009), as it was reasonable to believe, under the totality of circumstances, that evidence relevant to defendant's DWI arrest would be found in the car he had just been seen operating. Although this Court has not yet considered the search-

incident-to-arrest exception under Gant, and the Appellate Division declined to address it (which the State raised for the first time on appeal), there is a sufficient record in this case to support application of this exception.

A. The Appellate Division and motion judge both properly found the search of defendant's car was lawful under the automobile exception.[7]

Both the Appellate Division and motion judge properly upheld the car search under the automobile exception. The Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee the right of people to be secure against unreasonable searches by requiring warrants issued upon probable cause. Although "[o]ur jurisprudence under both constitutional provisions expresses a preference that police officers secure a warrant before they execute a search," "[w]arrantless searches are permissible . . . if 'justified by one of the few specifically established and well-delineated exceptions to the warrant requirement," which the State must prove by a preponderance of the evidence. State v. Witt, 223 N.J. 409, 422 (2015) (quoting State v. Frankel, 179 N.J. 586, 597-98 (2004)); State v. Elders, 192 N.J. 224, 254 (2007). The automobile exception is one such exception to the warrant requirement.

In Witt, this Court returned to the automobile-exception standard under

[7] This section addresses Point I.A., I.B., and I.C. of defendant's supplemental brief.

State v. Alston, 88, N.J. 211 (1981), and reinstated that the warrantless search of a vehicle is permissible in New Jersey where (1) "the police have probable cause to believe that the vehicle contains contraband or evidence of an offense," and (2) "the circumstances giving rise to probable cause are unforeseeable and spontaneous." Witt, 223 N.J. at 414, 422, 447 (citing Alston, 88 N.J. at 233). The automobile exception is premised on the following rationales: (1) that a readily mobile vehicle can be quickly moved; (2) that an individual has a "lesser expectation of privacy in an automobile compared to a home" because of the pervasive government regulation of vehicles; (3) that "the process of seizing a car and detaining the driver while securing a search warrant 'would be more intrusive than the actual search itself'"; and (4) that the unforeseeable and spontaneous circumstances giving rise to probable cause occur swiftly. State v. Terry, 232 N.J. 218, 233-35 (2018); Witt, 223 N.J. at 422-24, 431 (citing Alston, 88 N.J. at 234) (other citations omitted); see also Collins v. Virginia, 584 U.S. 586, 591-92 (2018). Whether the vehicle was parked or moving at the time of the encounter, this Court has uniformly applied the same automobile-exception standard, that was in effect at the time, to either scenario.

1. The circumstances leading to defendant's DWI arrest, which included a fresh track mark on his arm, established probable cause to believe that evidence of his recent drug use was inside the car he had just been seen operating.

Applying New Jersey's automobile-exception standard here, the circumstances leading to defendant's DWI arrest also gave the officers probable cause to believe that evidence of defendant's recent drug use, such as additional narcotics or other drug paraphernalia, were inside the car he was driving when he arrived at the police station. Probable cause to search exists when, under the totality of circumstances, there is "a fair probability that contraband or evidence of a crime will be found in a particular place"; "it does not demand [a] showing that such belief be correct or more likely true than false." See Illinois v. Gates, 462 U.S. 213, 238 (1983); State v. Moore, 181 N.J. 40, 46-47 (2004) (emphasis added); State v. Johnson, 171 N.J. 192, 214-15 (2002); State v. Wilson, 478 N.J. Super. 564, 577 (App. Div. 2024).

A variety of factors determine whether probable cause exists, including an officer's firsthand observations and the conclusions drawn from those observations in light of his "common and specialized experience." Johnson, 171 N.J. at 215, 217 ("[I]n determining the reasonableness of [an officer's] actions[,] . . . consideration must be given to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."); Moore, 181 N.J. at 46-47; see also District of Columbia v. Wesby, 583 U.S. 48, 58

(2018) (recognizing that officers are "allowed . . . to make . . . 'common-sense conclusions about human behavior'") (quoting Gates, 462 U.S. at 231). This Court also has sensibly recognized that "the very same facts that constitute probable cause to arrest a vehicle's occupant often will afford police officers probable cause to believe that a vehicle contains evidence of crime or contraband." State v. Pierce, 136 N.J. 184, 204 (1994).

Such was the case here. Trooper Radetich saw defendant arrive at the station, emerge from the driver's door of his car, stumble over his own feet, and almost fall into a wall when trying to enter the station. During his initial interview, Radetich also noticed a fresh track mark on defendant's arm; and, based on his years of law-enforcement experience, recognized that defendant's slow and raspy voice, pinpoint eyes, and "white stuff" on the side of his mouth were signs that defendant was under the influence of a narcotic. To confirm his suspicion, Radetich conducted field-sobriety tests with another trooper. Defendant failed the one-leg stand and walk-and-turn test, which confirmed that he was intoxicated; and defendant's HGN test was normal for narcotic use. (Psb7 to 9).

As in State v. Irelan, 375 N.J. Super. 100, 118-19 (App. Div. 2005), the salient facts that were known to the police here—that defendant reasonably appeared intoxicated due to narcotic use, that he had recently consumed a

narcotic based on the fresh track mark on his arm, and that he had recently occupied the vehicle he drove to the station for some unknown period of time—provided probable cause to suspect that a narcotic, by way of a hypodermic needle, had been used in the vehicle, and that the vehicle may have contained more narcotics or other drug paraphernalia. Indeed, this Court has expressly acknowledged that, unlike typical traffic offenses, evidence at risk of destruction that pertains to arrests for DWI, or operating a vehicle while possessing CDS, is often ordinarily found in the suspect's vehicle. Pierce, 136 N.J. at 210. This Court has long recognized the reasonableness of this belief: "[I]f the officer has reason to believe the driver is under the influence of liquor or drugs, he may search the car for alcohol or narcotics." State v. Boykins, 50 N.J. 73, 77 (1967); see also Irelan, 375 N.J. Super. at 118–19 (applying Pierce and Boykins, and finding probable cause existed to search DWI arrestee's car for related evidence). The probable-cause prong of the automobile exception was thus met here.

This case is unlike State v. Jones, 326 N.J. Super. 234 (App. Div. 1999), a non-dispositive Appellate Division case on which defendant relied below. There, unlike Irelan and here, Jones did not appear intoxicated to the officer. See Irelan, 375 N.J. Super. at 118 (summarizing Jones). Thus, as the Appellate Division found in Jones, the alcohol on his breath and admission to

drinking one beer—which is not a per se violation of law—during an otherwise minor traffic stop for failing to signal a lane change, did not give rise to probable cause to search his car for open containers. See Jones, 326 N.J. Super. at 237-45. Defendant's case is different, and more like Irelan, because defendant physically appeared intoxicated to the officer, as verified by his failed sobriety tests, and entered the station with a fresh track mark on his arm. This established a well-grounded suspicion that there may have been evidence of defendant's recent drug use in the car that he had just been operating.

In reviewing this case law, the Appellate Division here aptly affirmed that the car search was supported by probable cause. (Dsa62 to 67; Psa1). In doing the same, this Court need look no further than New Jersey's jurisprudence. The three out-of-state cases on which defendant relies, one from Vermont and two federal, district-court cases, see (Dsb35 to 37), merely show that probable cause to search is a totality-of-circumstances question. And they do not cover all situations in which probable cause to search a vehicle may arise, as shown by Irelan. See also State v. Winfrey, 24 A.3d 1218, 1224-28 (Conn. 2011) (holding "officers, having observed defendant discard and later swallow what appeared to be multiple doses of heroin, had probable cause to believe that additional contraband would be found in the car he had been driving"); Autry v. State, 626 S.E.2d 528, 529-30 (Ga. Ct. App.

2006) (holding facts known to officer—including suspects' exhibition of recent drug use, evidence of drug paraphernalia in plain view, and fresh track marks on their arms—provided probable cause to search van they were in).

This Court clarified in Pierce, 136 N.J. at 204, that "the very same facts that constitute probable cause to arrest a vehicle's occupant often will afford police officers probable cause to believe that a vehicle contains evidence of crime or contraband." As the panel found, the same was true here.

2. The circumstances establishing probable cause to search arose unforeseeably and spontaneously during an unplanned, swiftly unfolding DWI investigation.

The circumstances establishing probable cause that evidence of drug activity was in the car also arose unforeseeably and spontaneously. Defendant appeared intoxicated when he arrived at the police station to speak with the police about an unrelated harassment complaint. This sparked an unplanned DWI investigation due to defendant's choice to drive himself there while impaired, instead of accepting the trooper's offer to pick him up from work, or choosing to take a taxi, or arrange for a friend or family member to drive him there. The probable cause to search defendant's car did not develop before his arrival, but during the unplanned DWI investigation that led to his DWI arrest. The unforeseeable-and-spontaneous prong of the automobile exception was thus satisfied. And because both prongs of the automobile exception were

met, the police appropriately searched the car under this exception.

Although there may have been some indication that defendant could have used drugs prior to when he returned Trooper Radetich's phone call, it was far from probable cause to suspect he would drive and appear at the police parking lot visibly impaired, with a fresh track mark on his arm. This is thus not a case where officers were sitting on probable cause they had developed beforehand, lying in wait for defendant to show up in a car so they could search it without a warrant. See Witt, 223 N.J. at 447-448 (noting that "if a police officer has probable cause to search a car and is looking for that car, then it is reasonable to expect the officer to secure a warrant if it is practicable to do so") (emphasis added). Nor is this a case involving prior, discrete police surveillance that developed probable cause in advance before the encounter. See Smart, 253 N.J. at 171-73.

In fact, this case is wholly unlike Smart, where the police had been surveilling the defendant for more than an hour at various locations, unbeknownst to him, for drug trafficking before conducting a deliberate investigative stop of his car and then calling a K9 officer to develop probable cause to search that car when he did not consent to the search. See id. at 171-73. Smart is thus inapposite to the circumstances here. Indeed, Smart itself cautioned that "the question whether the circumstances giving rise to probable

cause were unforeseeable and spontaneous is a fact-sensitive inquiry that should be analyzed case by case[.]" See 253 N.J. at 173.

Instead, as the Appellate Division aptly found, this case is more like Irelan. There, like here, the circumstances giving rise to probable cause did not arise in advance of the police encounter— they developed during an unplanned DWI investigation. See Irelan, 375 N.J. Super. at 118-19. And like here, the circumstances that unfolded during that unplanned investigation, as Irelan astutely found, unforeseeably and spontaneously gave rise to probable cause to search the implicated vehicle under the automobile exception. Ibid. Similar to here, probable cause to search was based on the troopers' observations "that defendant reasonably appeared intoxicated, that he therefore had recently consumed a substantial quantity of alcohol, and that he had recently occupied the vehicle for some unknown period of time." Ibid.

Neither Witt nor Smart held that, if the information accumulated at any phase of an investigation could be predicted to yield more incriminating facts, the police must halt their efforts and pursue a search warrant. That argument, if carried to its logical conclusion, would virtually eliminate the automobile exception since police work, in general, is usually gathered step-by-step. Nothing in Witt or Smart demands such a strained, impractical interpretation of the automobile exception.

Additionally, Trooper Radetich's call with defendant, requesting that he come to the station to be interviewed about an unrelated harassment complaint—more than two hours before defendant came to the station—after which Radetich commented that he thought defendant was "possibly" intoxicated at that time, did not come close to establishing probable cause to search defendant's car for intoxicants.[8] Neither did the harassment victim's text messages from defendant, indicating he had previously hit someone while "high" with his car at some prior undefined time. As the Appellate Division correctly held, neither circumstance undermined the unforeseeability and spontaneity of the probable cause that arose later when defendant chose to drive himself to the station while impaired; almost stumbled into a wall upon entering the station after getting out from a vehicle he had just been seen driving; and arrived with a fresh track mark on his arm.

Therefore, because there was probable cause that the car contained drugs or related paraphernalia based on Trooper Radetich's observations during the unplanned DWI investigation, the police permissibly searched the car's interior and the containers therein that may have been concealing the object of

[8] The CAD abstract, included in defendant's supplemental appendix, shows that the call between defendant and Trooper Radetich took place around 6:04 p.m. (Dsa24; Dsa26). Defendant arrived to the station around 8:30 p.m., about two-and-a-half hours later. (1T84-1 to 22; Dsa26).

the search, such as the plastic bag containing the loaded handgun. See United States v. Ross, 456 U.S. 798, 821-23, 825 (1982) (holding that, just as containers that may conceal the object of a search authorized by a warrant may be opened immediately, so too can containers and compartments that may conceal the object of a warrantless car search when the police have probable cause to believe it contains contraband); State v. Esteves, 93 N.J. 498, 508 n.3 (1983); State v. Guerra, 93 N.J. 146, 151 (1983); Wilson, 478 N.J. Super. at 577-79. "The scope of a warrantless search of an automobile is defined by the object of the search and the places where there is probable cause to believe that it may be found." Esteves, 93 N.J. at 508 (citing Guerra, 93 N.J. at 151; Alston, 88 N.J. at 217); Wilson, 478 N.J. Super. at 578. And here, the plastic bag certainly could have been holding narcotics or other evidence of defendant's drug use. The police thus properly seized from the passenger compartment the heroin and hypodermic needle found in the center console, and the handgun loaded with a high-capacity magazine found in the plastic bag, under the automobile exception.

3. The automobile exception is not limited to roadside car searches and was appropriately applied here.

Contrary to defendant's assertion, the automobile exception does not solely apply to roadside car searches. Importantly, the practical reasons that Witt explained—to excise the showing that exigent circumstances making it

impracticable to obtain a warrant need to exist before the automobile exception can apply—were not meant to limit the automobile exception to roadside searches. They were meant to illustrate the unworkability of the exigent-circumstances requirement set forth in State v. Cooke, 163 N.J. 657 (2000), and State v. Pena-Flores, 198 N.J. 6 (2009). See Witt, 223 N.J. at 441-47.

Rather than limiting the automobile exception solely to roadside searches, Witt specifically recognized and held that the automobile exception may apply to parked cars where the circumstances giving rise to probable cause are unforeseeable and spontaneous. 223 N.J. at 447-48. It thus continued the well-settled principle, under the Alston standard, as well as the more-restrictive standard under Cooke and Pena-Flores, that the automobile exception is not limited to cars encountered on the roadside, but also applies to parked cars elsewhere. See, e.g., Pena-Flores, 198 N.J. at 43 (recognizing that "[t]he justification to conduct a warrantless automobile search does not turn on whether the vehicle is parked or moving"); Cooke, 163 N.J. at 664-65 (holding automobile exception "applies equally to vehicles stopped on the highway and vehicles parked on a public street or in a parking lot"); State v. Colvin, 123 N.J. 428, 437 (1991); Esteves, 93 N.J. at 501, 504-09 (upholding search of car in public parking lot); State v. Martin, 87 N.J. 561, 567 (1981). Indeed, on the same day that Alston was decided, this Court held in a companion case that the

automobile exception applies to "parked and unoccupied vehicles encountered by police in public parking lots or on city streets as well as to moving vehicles stopped on the open highway." Martin, 87 N.J. at 567.

Consistently, from Alston/Martin, to Cooke/Pena-Flores, and through Witt, this Court has applied the same automobile-exception standard, in effect at the time, to all vehicles, whether the vehicle was parked or moving at the time of the encounter. This Court's decision in Colvin was no different.

In Colvin, after reviewing federal and New Jersey automobile-exception jurisprudence, this Court generally held for all vehicles that "if the police have probable cause sufficient to seize the vehicle in order to prevent the loss of the evidence, they have justification to conduct the search at the scene." 123 N.J. at 433-36. It then went on to discuss factors that would make it impracticable to secure a warrant, that Cooke and Pena-Flores later used as examples for their iterated exigency requirement to conduct an automobile-exception search, for all vehicles, not just parked ones. Compare Colvin, 123 N.J. at 433-36 with Cooke, 163 N.J. at 667-76, and Pena-Flores, 198 N.J. at 22-26, 28-30.

This Court, at the end of the Colvin opinion, then held, for all vehicles at that time, that: "The justification to conduct a warrantless search does not turn on whether the vehicle is parked or moving. The justification turns on the circumstances that make it impracticable to obtain a warrant when the police

have probable cause to search the car." 123 N.J. at 437. This Court in Colvin thus was not applying a special exigency test exclusively for parked cars as defendant seems to urge. Cautioning against a bright-line rule requiring warrants for whenever a parked car is encountered, this Court ultimately applied the same automobile-exception standard it believed existed for all vehicles, whether they were parked or moving at the time of the encounter, specifically holding, "When, as here, the police have no advance knowledge of the events to unfold, no warrant is required to search a parked car if the police have probable cause to believe that the car contains criminal contraband and have articulable reasons to search the vehicle immediately to prevent the loss or the destruction of the evidence." 123 N.J. at 436-37.

Similarly, this Court in Witt continued its uniform practice of applying the same automobile-exception standard to all vehicles, whether they were parked or moving when first encountered, when it returned to the Alston standard. After summarizing several cases that held the automobile exception applied to parked cars, including Martin, Alston, and Colvin, this Court held that it was "return[ing] to the Alston standard" because it "properly balances the individual's privacy and liberty interests and law enforcement's investigatory demands." See Witt, 223 N.J. at 427-34, 447.

This Court then went on to address the fear in Cooke that, without some

requirement of exigency, "a car parked in the home driveway of vacationing owners would be a fair target of a warrantless search if the police [solely] had probable cause to believe the vehicle contained drugs." See Witt, 223 N.J. at 447-48 (citing Cooke, 163 N.J. at 667-68). Recognizing that the Alston standard still has a limited exigency requirement—namely, the unforeseeability and spontaneity of the circumstances giving rise to probable cause, and the inherent mobility of a vehicle—this Court held that Alston's unforeseeability-and-spontaneity requirement eliminated the fear that a car parked in a home driveway could be a fair target, solely based on probable cause to believe that the vehicle contained drugs, because: "In the case of the parked car, if the circumstances giving rise to probable cause were foreseeable and not spontaneous, the warrant requirement applies."[9] See Witt, 223 N.J. at

[9] Contrary to defendant's assertion, Collins v. Virginia did not erode, or nullify, the import of this holding from Witt. (Dsb32 n.10). In Collins, a motorcycle, underneath a tarp, was parked within a partially enclosed section of the driveway, by brick walls, next to the home, beyond where a visitor would walk to get to the front of the house. 584 U.S. at 589-90, 593. Under those circumstances, the United States Supreme Court found that the motorcycle was within the home's curtilage, and held that the automobile exception alone did not provide the necessary lawful right of access to search a vehicle parked therein or within a home. Id. at 588, 593-97. To be lawfully in the area, the police needed a warrant, another warrant exception, or implied license (that gives officers permission to walk to the front door to make an inquiry). See State v. Ingram, 474 N.J. Super. 522, 537 (App. Div. 2023). But, as the Appellate Division pointed out in Ingram, a driveway will not always be considered part of a home's curtilage, as "there may be instances where a driveway is far enough from the home and its immediate surroundings

431-32, 447-48.

This plain language in Witt is significant for two reasons. One, as the Appellate Division astutely held, the clear import of this language is that a parked car may be searched where the circumstances giving rise to probable cause are unforeseeable and spontaneous. See (Dsa59 to 60). And two, this Court was applying the same automobile-exception standard to parked cars that it was returning to for all vehicles—uniformly applying the same automobile-exception standard in effect for any vehicle, whether it is parked or moving—as this Court has done for decades.

This well-settled principle, that the same automobile exception equally applies to parked cars, should be applied to the car defendant parked at the police station's public parking lot. At the time of the search, defendant's car had not been impounded by police. Though the car would be impounded under John's Law, N.J.S.A. 39:4-50.23, Witt, 223 N.J. at 428, affords "police officers at the scene the discretion to choose between searching the vehicle immediately if they spontaneously have probable cause to do so, or to have the vehicle removed and impounded and seek a search warrant later." See State v. Rodriguez, 459 N.J. Super. 13, 23 (App. Div. 2019); see also State v.

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to not qualify as curtilage." 474 N.J. Super. at 539. The reason part of the driveway was considered curtilage in Collins is because the driveway abutted the home. Nothing like Collins happened here.

Courtney, 478 N.J. Super. 81, 87-88, 94-97 (App. Div. 2024) (recently holding the same specifically in the context of John's Law).[10] Indeed, in returning to Alston, Witt noted that Alston "emphasized that 'when there is probable cause to conduct an immediate search at the scene of the stop, the police are not required to delay the search by seizing and impounding the vehicle pending review of that probable cause determination by a magistrate.'" 223 N.J. at 428 (quoting Alston, 88 N.J. at 234-35).

In other words, the anticipated impoundment of a vehicle does not revoke the permissiveness of a car search under the automobile exception provided that probable cause to search the motor vehicle arose spontaneously and unforeseeably. When police have probable cause to conduct a car search under the automobile exception, officers should be able to do so at the place where they first encounter the vehicle. See Esteves, 93 N.J. at 505.

Witt only precluded the automobile exception from applying to cars that have already been impounded, thereby departing from federal jurisprudence. 223 N.J. at 448-49 (holding "[w]hatever inherent exigency justifies a warrantless search at the scene under the automobile exception . . . cannot justify the failure to secure a warrant after towing and impounding the car at

[10] Just as Witt did not restrict the automobile exception exclusively to roadside stops, neither did the Appellate Division in Rodriguez or Courtney.

headquarters") (emphasis added). In using the term "headquarters" to do so, this Court in Witt was not contemplating the situation presented here, where a car was parked in a station's public parking lot by a defendant who drove it there while intoxicated. See ibid. Defendant's broad assertion that Witt held warrants would be required for searches conducted at police stations is thus inaccurate. (Dsb17). As the Appellate Division astutely recognized, Witt's use of the term "headquarters" was a reference to a police impound lot, "as when a vehicle is towed and impounded, it is no longer mobile and the inherent exigencies supporting an on-scene search [thereby] dissipate." (Dsa61 to 62). Similarly, this Court's term "on-scene warrantless searches" in Witt, 223 N.J. at 449, was not used to limit the automobile exception to roadside searches, but as a shorthand to distinguish searches of impounded vehicles from those conducted while a vehicle is still on the scene.

The principle—that officers at the scene of an encounter have discretion to choose whether to impound a vehicle or immediately search it under the automobile exception when the exception's two critical elements are met (i.e., probable cause that arises unforeseeably and spontaneously)—was recently reaffirmed in Courtney, specifically where a vehicle was subject to impoundment under John's Law. 478 N.J. Super. at 87-88, 99-100. In doing so, the Appellate Division noted that Witt imposed a "location restriction" on

searches under the automobile exception: that they have to be conducted "on-scene" and could not be conducted after the police have towed and impounded the car. Ibid. While the Appellate Division noted that this "precondition" was "based on the 'inherent exigency' arising during roadside encounters," it was not suggesting that Witt's holding was limited solely to roadside stops. What the Appellate Division was doing, as it had done in Rodriguez, and again in this case, was distinguishing on-scene searches from post-impoundment ones as this Court did in Witt.

Indeed, in Courtney, the Appellate Division read Witt as establishing a "simple binary test" (i.e., the choice between two things) for determining where an automobile-exception search can be executed: provided the State has probable cause that arose spontaneously and unforeseeably, "searches conducted on-scene are permitted; searches conducted off-scene are not." 478 N.J. Super. at 99-100 (emphasis added). It was not drawing a distinction between roadside searches and everything else. Rather, the Appellate Division acknowledged that "the automobile exception is a perfectly valid doctrine that balances competing constitutional interests . . . and serves a salutary purpose"; and that "the location restriction adopted in Witt must be interpreted and applied in light of th[is] Court's acknowledgement of the constitutional benefits of a contemporaneous on-the-spot warrantless search as compared to a

delayed [one] conducted after the vehicle has been impounded and a search warrant obtained." 478 N.J. Super. at 99-100.

In making the distinction between on-scene searches from post-impoundment ones, the Appellate Division in Courtney reasoned that "the whole point of the Witt reform [wa]s to obviate the need for officers to make subjective assessments about the level of exigency needed" for the automobile exception. Id. at 98. As Witt stressed, the police no longer need to estimate the probability of harm facing officers and motorists under the exception. Ibid. Rather, "[f]or purposes of implementing the Witt location restriction, . . . the critical determinant is not the likelihood—or inevitability—of impoundment, nor the reason for the decision to impound the vehicle." 478 N.J. Super. at 97. If it were, the Appellate Division recognized that such a "rule might swallow the automobile exception." Ibid. Hence, as the Appellate Division held in Courtney, a vehicle's anticipated impoundment, under John's Law or otherwise, does not preclude the automobile exception from applying.

In Courtney, the Appellate Division further held that, "[v]iewed in context, the [Witt] Court's reference to 'fake' exigencies after a vehicle has been towed/impounded signals [that] the exigencies extant before towing/impoundment are not fake." 478 N.J. Super. at 99-100. As this Court noted in Witt, the limited exigency justifying an automobile search under the

Alston standard is the unforeseeability and spontaneity of the circumstances giving rise to probable cause, that occur swiftly, and the "inherent mobility of the automobile." 223 N.J. at 431-32 (quoting Alston, 88 N.J. at 233-34). The panel below properly held that the exigencies inherent to an on-scene search, before impoundment, had not dissipated here.

While defendant misinterprets one line from Alston explaining that "the exigent circumstances that justify the invocation of the automobile exception are . . . . [in part] the inherent mobility of the automobile stopped on the highway," Alston's companion case Martin—decided on the same day, which held that the automobile exception applies to "parked and unoccupied vehicles encountered by police in public parking lots or on city streets as well as to moving vehicles stopped on the open highway"—shows that this Court was not limiting the automobile exception to roadside stops. See Martin, 87 N.J. at 567; Alston, 88 N.J. at 233-35. Indeed, as this Court critically held in Alston: "The characterization of ready mobility of the vehicle . . . is applicable to the vehicle itself, and the car is readily movable until such time as it is seized, removed from the scene and securely impounded by the police. Until then it is potentially accessible to third persons who might move or damage it or remove or destroy evidence contained in it." Alston, 88 N.J. at 234-35; see also California v. Carney, 471 U.S. 386, 392-94 (1985) (noting vehicle that can be

turned on by ignition key remains readily mobile, even if not actually moving).

Here, as the panel aptly held, such applied to the car defendant parked on his own at the police station's public parking lot, that had yet to be impounded. (Dsa61). Unlike a vehicle in a secured impoundment lot behind a locked fence, a vehicle in a public parking lot, including a police station's, would have to be constantly protected from third-party access, as others could tamper with or destroy evidence within the car or remove it altogether. As the Appellate Division determined, the exigencies inherent to on-scene searches, such as the mobility of the vehicle and destruction of evidence, were still present for defendant's vehicle that had an unsecured passenger and had yet to be towed and impounded. (Dsa61).

In addition, as the Appellate Division explained in Courtney, "it is not entirely accurate to suggest John's Law invariably requires police to impound a vehicle operated by an arrested drunk driver." 478 N.J. Super. at 95 n.4. As instructed in Attorney General Law Enforcement Directive No. 2004-1, Appendix B, "John's Law 'does not negate the [c]onstitutional right of the arrested person to make other arrangements for the removal of the vehicle by another person who is present at the scene of the arrest.'" Ibid. In other words, even in John's Law cases, the process of seizing a car and detaining the driver while securing a search warrant could be more intrusive than the actual

automobile-exception search itself.

As the Appellate Division explained in Courtney too, "even when an on-scene search reveals a weapon, contraband, or other evidence leading to an occupant's custodial arrest, the arrestee might be charged and promptly released from the police station on recognizance or release conditions." 478 N.J. Super. at 101 n.7. "[So] if police cannot conduct an on-the-spot search, the filing of a complaint-summons or a complaint-warrant application may [actually] be delayed pending the application for a search warrant and ensuing search of an impounded vehicle, ultimately delaying the suspect's release from custody," resulting in a greater intrusion. Ibid. On top of this, as the Appellate Division explained, the police have reasonable interests in conducting searches to simplify the proofs relating to the chain of custody, and preclude claims that evidence was planted or otherwise tampered with during the towing process to an impoundment facility. Id. at 97 n.5.

In sum, the Appellate Division properly upheld the search of defendant's car under the automobile exception. This Court has, for decades, applied the same automobile-exception standard, that was in effect at the time, to all vehicles, whether they were parked or moving at the time of the encounter. It should do the same here, where the vehicle defendant had drove while intoxicated, and parked in a public, police parking lot, had yet to be

impounded.[11] Because the circumstances giving rise to probable cause to search defendant's car here arose unforeseeably and spontaneously, the police appropriately searched it under the automobile exception.

B. The motor-vehicle search also was justified under the search-incident-to-arrest exception.

In addition to the automobile exception, the car was properly searched under the search-incident-to-arrest exception. The search-incident-to-arrest exception is based on two rationales: "interests in officer safety and evidence preservation that are typically implicated in arrest situations." Gant, 556 U.S. at 338; Irelan, 375 N.J. Super. at 107-08.

Under Arizona v. Gant, the police may search a vehicle incident to a recent occupant's arrest in two scenarios. First, the police may search the vehicle if the "arrestee is unsecured and within the reaching distance of the passenger compartment at the time of the search." Gant, 556 U.S. at 343 (based on Chimel v. California, 395 U.S. 752 (1960), and the narrowed holding of New York v. Belton, 453 U.S. 454 (1981)). And second, police may search a vehicle incident to arrest "when it is 'reasonable to believe

[11] Witt also held that the police are not required to secure a warrant "merely because 'the particular occupants of the vehicle may have been removed from the car, arrested, or otherwise restricted in their freedom of movement.'" 223 N.J. at 428. Defendant's detention for the DWI arrest at the time of the car search thus did not alter the automobile exception's applicability.

evidence relevant to the crime of arrest might be found in the vehicle.'" Ibid. (based on Justice Scalia's concurrence in Thornton v. United States, 541 U.S. 615, 632 (2004), joined by Justice Ginsburg). This second scenario does not depend on whether or where the arrestee is secured at the time of the search. Id. at 343-44.

Before Gant, this Court had already specifically addressed the scope of the Belton rule, rejecting the broader reading of Belton and similarly narrowing it as Gant did later. Compare State v. Eckel, 185 N.J. 523, 540-41 (2006) (rejecting broad reading of Belton and holding it does not apply where arrestee is removed and secured elsewhere and thus cannot endanger police or destroy evidence) with Gant, 556 U.S. at 343, 347 n.8 (noting Eckel reached the same conclusion). But this Court has never been presented with the alternative justification in Gant and has therefore not yet had the opportunity to address it. Importantly, Gant's second scenario is based on Justice Scalia's concurrence in Thornton, and not on the broad reading of Belton that this Court rejected in Eckel, which was decided before Gant. Although Gant's alternative remains an open question in New Jersey, this Court, as noted above, has long before Gant recognized the reasonableness of searching a car for drug evidence when the driver is arrested for driving while under the influence of drugs. See Boykins, 50 N.J. at 77.

Moreover, a majority of states are already following the second scenario of Gant, allowing an arrestee's implicated vehicle that had been in his control at the time of the encounter, to be searched incident to arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.[12] Gant's second scenario is fully consistent with the search-

[12] At least twenty-nine states, and the District of Columbia, have already adopted the second Gant scenario in published opinions. See, e.g., State v. Jemison, 66 So. 3d 832, 847 (Ala. Crim. App. 2010); Pitka v. State, 378 P.3d 398, 400-01 (Alaska Ct. App. 2016); Harris v. State, 2012 Ark. App. 674, at *5-6 (Ark. Ct. App. 2012); People v. Sims, 273 Cal. Rptr. 3d 792, 800-02 (Cal. Ct. App. 2021); People v. Johnson, 230 Cal Rptr. 3d 869, 875, 877-78 (Cal. Ct. App. 2018); People v. Crum, 312 P.3d 186, 187-88 (Colo. 2013); Johnson v. United States, 40 A.3d 1, 11 (D.C. 2012); State v. Gardner, 72 So. 3d 218, 220 (Fla. Dist. Ct. App. 2011); State v. Hargis, 756 S.E.2d 529, 537 (Ga. 2014); State v. Smith, 266 P.3d 1220, 1224-25 (Idaho Ct. App. 2011); People v. Bridgewater, 918 N.E.2d 553, 558 (Ill. 2009); Meister v. State, 933 N.E.2d 875, 878 (Ind. 2010); State v. Torres, 421 P.3d 733, 738-41 (Kan. 2018); State v. Ewertz, 305 P.3d 23, 26-28 (Kan. Ct. App. 2013); Hinchey v. Commonwealth, 432 S.W.3d 710, 713-14 (Ky. Ct. App. 2014); State v. Guillory, 21 So. 3d 945, 949 (La. 2009); Taylor v. State, 137 A.3d 1029, 1032-34 (Md. 2016); Commonwealth v. Perkins, 989 N.E.2d 854, 858 (Mass. 2013); People v. Mead, 908 N.W.2d 555, 562 (Mich. Ct. App. 2017); Carson v. State, 341 So. 3d 995, 1001-02 (Miss. Ct. App. 2022); State v. Richardson, 313 S.W.3d 696, 699 (Mo. Ct. App. 2010); State v. Noli, 529 P.3d 813, 839 n.16 (Mont. 2023); State v. Sanders, 855 N.W.2d 350, 358-59 (Neb. 2014); People v. Livigni, 906 N.Y.S.2d 782, 782 (N.Y. Dist. Ct. 2009); State v. Mbacke, 721 S.E.2d 218, 221-22 (N.C. 2012); State v. Price, 986 N.E.2d 553, 557-59 (Ohio Ct. App. 2013); Robinson v. State, 754 S.E.2d 862, 873 (S.C. 2014); State v. Fischer, 873 N.W.2d 681, 690-92 (S.D. 2016); Daves v. State, 327 S.W.3d 289, 292-93 (Tex. Ct. App. 2010); Armstead v. Commonwealth, 695 S.E.2d 561, 564-66 (Va. Ct. App. 2010); State v. Noel, 779 S.E.2d 877, 883-84 (W. Va. 2015); State v. Dearborn, 786 N.W.2d 97, 105 (Wis. 2010). See also Vanreenan v. State, No. A-14139, 2024 Alas. App. LEXIS 144, at *4-8 (Alaska Ct. App. Dec. 11, 2024). But see State v. Gaskins, 866 N.W.2d 1, 13

incident-to-arrest exception's historic rationales of officer safety and evidence preservation that are typically implicated in arrest situations. Gant, 556 U.S. at 338. And apart from Eckel (which is no longer in conflict with federal law because of Gant), our Supreme Court has generally applied the same search-incident-to-arrest test under the New Jersey Constitution as the Fourth Amendment. See State v. Oyenusi, 387 N.J. Super. 146, 153 (App. Div. 2006), certif. denied, 189 N.J. 426 (2007). This Court should similarly do so here by applying Gant—as most other jurisdictions have done and as this Court has already recognized as reasonable.

In doing so, this Court will not be justifying the search of a car in every search-incident-to-arrest situation. For example, the United States Supreme Court in Gant did not uphold the search there under the second Gant scenario because it was not reasonable to believe that evidence relevant to the offense of arrest—driving with a suspended license—would be found in the implicated vehicle. 556 U.S. at 343-44 (holding that, "[i]n many cases, as when a recent

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(Iowa 2015); State v. Patton, 219 P.3d 651, 657-58 (Wash. 2009). Three additional states, in recent unpublished opinions, have upheld car searches under the second Gant scenario too, involving DWI arrests like here. See, e.g., State v. Sonn, 2024 Conn. Super. LEXIS 1796, at *35-37 (Conn. Super. Ct. Aug. 14, 2024); State v. Christianson, No. A23-0169, 2023 Minn. App. Unpub. LEXIS 750, at *7 (Minn. Ct. App. Sep. 18, 2023); State v. Helmick, No. M2019-00941-CCA-R3-CD, 2020 Tenn. Crim. App. LEXIS 758, at *20-22 (Tenn. Crim. App. Nov. 30, 2020). The State is not aware of any unpublished cases to the contrary.

occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence").

As this Court has similarly recognized, "when the predicate offense is a motor-vehicle violation, the vehicle stopped by police would not ordinarily contain evidence at risk of destruction that pertains to the underlying offense[.]" Pierce, 136 N.J. at 210. But this Court has excepted cases involving "violations of N.J.S.A. 39:4-50 (driving while intoxicated) and N.J.S.A. 39:4-49.1 (operating vehicle while possessing controlled dangerous substances)." See ibid. And pertinent here, several jurisdictions have upheld car searches under the second Gant scenario, involving DWI arrests, where it was reasonable to believe evidence relevant to the DWI offense would be found in the implicated vehicle.

It follows that the search of defendant's car was also justified under the search-incident-to-arrest exception because it was reasonable to believe intoxicants, or other evidence relevant to defendant's DWI offense, would be found in the vehicle he had driven to the police station given how intoxicated he was upon his arrival. See, e.g., People v. Quick, 210 Cal. Rptr. 3d 256, 260-61 (Cal. Ct. App. 2016) ("It is certainly logical and reasonable to expect that items related to alcohol or drug consumption, such as alcoholic beverage bottles or drug paraphernalia, might readily be contained in the intoxicated

driver's car."); People v. Kessler, 436 P.3d 550, 555-57 (Colo. App. 2018) (upholding search of car incident to DWI arrest under second scenario of Gant); State v. Cantrell, 233 P.3d 178, 183-86 (Idaho Ct. App. 2010) (same); Cobb v. State, 222 N.E.3d 373, 382-86 (Ind. Ct. App. 2023) (same); State v. Ewertz, 305 P.3d 23, 26-28 (Kan. Ct. App. 2013) (same); Commonwealth v. Elliott, 322 S.W.3d 106, 109-11 (Ky. Ct. App. 2010) (same); State v. Cook, 83 So. 3d 1259, 1260 (La. Ct. App. 2012) (same); Taylor v. State, 137 A.3d 1029, 1030-34 (Md. 2016) (same); Brown v. State, 311 A.3d 424, 432-36 (Md. Ct. Spec. App. 2024) (same); People v. Tavernier, 815 N.W.2d 154, 155-57 (Mich. Ct. App. 2012) (same); State v. Martinez, 795 S.E.2d 386, 390-91 (N.C. Ct. App. 2016) (same); State v. Washington, 335 P.3d 877, 878-83 (Or. Ct. App. 2014) (applying standard similar to second scenario of Gant and holding firearm in center console was lawfully seized during search of car incident to DWI arrest); State v. Ogeda, 315 S.W.3d 664, 666-68 (Tex. Ct. App. 2010); State v. Coffee, 943 N.W.2d 845, 846-47, 850-59 (Wis. 2020) (upholding search of passenger compartment and bag under second Gant scenario).

Trooper Radetich had seen defendant exit the driver's side of the car that was searched, stumble over his own feet, and almost fall into the station's wall right next to the front entrance upon his arrival. And during defendant's interview, Radetich saw a fresh track mark on defendant's forearm and

recognized, based on his years of law-enforcement experience, that defendant's slow and raspy voice, pinpoint eyes, and white stuff on the side of his mouth were signs of narcotic use. Under the totality of these circumstances, it was more than reasonable to believe that intoxicants, or related evidence, would be in the car he was just seen driving, making the search of the passenger compartment incident to his DWI arrest proper under Gant's second scenario.

In searching the vehicle incident to arrest, the police could permissibly search for evidence of intoxicants in the passenger-compartment area, including in closed containers that could contain such evidence. Gant, 556 U.S. at 344 ("[T]he offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein."). Because intoxicants could have reasonably been in the plastic bag and towel containing the loaded gun, it was thus reasonable for the officers to look inside them and seize the gun contained therein. The handgun, loaded with the large-capacity magazine, was therefore properly seized as part of the search incident to arrest in addition to the automobile exception, as were the drugs found in the center console.

Though the search-incident-to-arrest exception was not raised at the motion, it was raised on appeal. In any event, the record here is fully

developed and contains sufficient facts on which this Court can decide that the car search was proper under the search-incident-to-arrest exception. See State v. Scott, 229 N.J. 469, 480 (2017) (holding that State was permitted to raise different justification for admissibility on appeal because "[e]ven a cursory review of the record reveal[ed] sufficient facts upon which the State [could] base its . . . argument"). "It is a long-standing principle underlying appellate review that 'appeals are taken from orders and judgments and not from opinions . . . or reasons given for the ultimate conclusion.'" Id. at 479 (other citations omitted). And here, the record is not "'barren of facts that would shed light on [the] issue'" of whether the search of the passenger compartment was proper. Id. at 480 (quoting Witt, 223 N.J. at 418). On the contrary, the record supports the search of the car incident to arrest.

"'The question is not whether the police could have done something different, but whether their actions, when viewed as a whole, were objectively reasonable'" under the law. State v. Minitee, 210 N.J. 307, 323 (2012) (quoting State v. O'Donnell, 203 N.J. 160, 162, cert. denied, 562 U.S. 1094 (2010)). And here, under the totality of circumstances, the officers permissibly searched the car under the automobile exception and incident to defendant's DWI arrest. This Court should accordingly affirm the denial of defendant's motion to suppress under either warrant exception.

CONCLUSION

Based on the foregoing, the State asks this Court to affirm defendant's convictions and the denial of his motion to suppress, as the search of his vehicle was lawful under both the automobile exception and search-incident-to-arrest exception.

Respectfully submitted,

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