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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1675-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN P. GOMEZ-CIFUENTES,

Defendant-Appellant.

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Submitted April 3, 2017 – Decided April 21, 2017

Before Judges Sabatino and Nugent.

On appeal from the Superior Court of New  
Jersey, Law Division, Somerset County,  
Indictment No. 14-09-0607.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Daniel V. Gautieri, Assistant  
Deputy Public Defender, of counsel and on the  
briefs).

Michael H. Robertson, Somerset County  
Prosecutor, attorney for respondent (James L.  
McConnell, Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Defendant Juan P. Gomez-Cifuentes appeals from an October 30,  
2015 judgment of conviction, entered after he pled guilty to third-

degree possession of heroin and a judge sentenced him to three years of probation. On appeal, defendant raises the following arguments in his initial brief:

POINT I

THE COURT ERRED IN FAILING TO ADDRESS THE STATE V. CARTY VIOLATION IN A CASE WHERE THE POLICE OFFICERS ORDERED THE DRIVER AND FRONT-SEAT PASSENGER OUT OF A CAR THAT WAS STOPPED FOR A ROUTINE MOTOR-VEHICLE VIOLATION.

POINT II

DEFENDANT'S RIGHT TO DUE PROCESS OF LAW WAS VIOLATED WHEN THE COURT ACCEPTED HIS GUILTY PLEA TO THE HEROIN-POSSESSION CHARGE DESPITE A FACTUAL BASIS IN WHICH HE MERELY STATED THAT HE INTENDED TO SHARE SOMEONE ELSE'S HEROIN IN THE FUTURE. (Not Raised Below)

In a supplemental, defendant raises an additional argument:

POINT I

THE POLICE FAILED TO JUSTIFY ORDERING THE DEFENDANT-PASSENGER OUT OF THE LAWFULLY STOPPED MOTOR VEHICLE UNDER STATE V. BACOME, \_\_\_ N.J. \_\_\_, [(2017)], BECAUSE THE OFFICERS FAILED TO ARTICULATE ANY FACTS THAT WARRANTED HEIGHTENED CAUTION.

We agree with defendant's first point, namely, the trial court did not address whether the police officers who lawfully stopped the vehicle in which defendant was riding had a reasonable and articulable suspicion of criminal wrongdoing before seeking the driver's consent to search the vehicle. That issue turned on credibility determinations. For these reasons, we are constrained

to remand the matter for further proceedings. We reject defendant's separate argument that the factual basis for his guilty plea was inadequate.

In September 2014, a Somerset County grand jury charged defendant in the first count of a three-count indictment with third-degree possession of a controlled dangerous substance (CDS), heroin, N.J.S.A. 2C:35-10(a)(1).<sup>1</sup> Police also charged defendant in a complaint summons with disorderly persons possession of a hypodermic needle, N.J.S.A. 2C:36-6, following the same incident that resulted in the indictment.

In May 2015, defendant and the co-defendants unsuccessfully moved to suppress twenty-six wax folds of heroin police seized from a vehicle in which defendant was a passenger. Thereafter, in September 2015, defendant pled guilty to the third-degree possessory offense and the State agreed to dismiss the disorderly persons offense. One month later, the trial judge sentenced defendant to the three-year probationary term, required defendant to undergo drug and alcohol evaluation, ordered him to perform fifty hours of community service, and imposed appropriate penalties and assessments. This appeal followed.

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<sup>1</sup> In the second and third counts, the grand jury charged two others with the same offense.

The State developed the following proofs at defendant's suppression motion. On July 23, 2014, at approximately 11:45 a.m., while patrolling in a marked police vehicle, uniformed Bridgewater police officers John Russell Yarnell, IV and John Bezak drove through a motel parking lot on Route 22. The motel was in a "high crime area for drugs." When they entered the parking lot, the officers observed a parked gold Pontiac with a single occupant, a female sitting in the driver's seat. After circling the motel and returning to Route 22, the officers again observed the Pontiac, which was now occupied by the driver and two male passengers. Officer Yarnell watched as the Pontiac "abruptly swerved" onto an exit ramp, "causing another vehicle to brake." The gold Pontiac's driver did not signal before changing lanes. Based on these observations, Officer Yarnell initiated a traffic stop, intending to issue the driver a motor vehicle summons. The Pontiac's driver stopped in the parking lot of a nearby Wendy's restaurant.

Officer Yarnell approached the Pontiac's driver's side while Officer Bezak approached the passenger's side. At Officer Yarnell's request, the driver, Belen Gomez, provided her credentials. Officer Yarnell asked Ms. Gomez to step out of the vehicle and then asked her who was with her in the car. Ms. Gomez

replied that she did not know the passengers and "was just giving them a ride."

While Ms. Gomez was outside, Officer Yarnell noticed the two male passengers "appeared to be overly nervous, shaking and sweating." Officer Yarnell asked defendant, who was seated in the front passenger seat, who else was in the car. In response, defendant stated his mother was driving him and his friend to Bound Brook from the motel. Officer Yarnell discovered defendant had an outstanding warrant and placed him under arrest. During a search incident to arrest, Officer Yarnell discovered a hypodermic needle in defendant's right pants pocket.

Meanwhile, the backseat passenger asked Officer Bezak if he could exit the vehicle because he was hot. Officer Bezak observed that while exiting the vehicle, the backseat passenger's "hand was cupped into a fist almost the entire time" while his other hand remained open. The officer observed the backseat passenger "shove something in between the passenger seat . . . wall and the seat cushion." Following these movements, Officer Bezak noticed the backseat passenger's hand was empty.

Officer Bezak communicated this information to Officer Yarnell, who, now believing there were drugs in the car, asked Ms. Gomez for consent to search her vehicle. Ms. Gomez orally agreed. Officer Yarnell then read the consent-to-search form to Ms. Gomez,

who had no questions regarding its contents before signing it. Although Officer Yarnell noticed Ms. Gomez "had an accent," he was confident that she understood everything that was occurring.

According to Officer Yarnell, Ms. Gomez spoke in English during their interaction. She appeared to understand what he was saying, never claimed she misunderstood, and never requested an interpreter. While he was talking to Ms. Gomez about her consent to search her vehicle, the rear seat passenger told her "'not to let [the officer] search the vehicle [and] that it was her right.'" In response, Mr. Gomez stated, "'I want him to search the vehicle.'" During that exchange, both Ms. Gomez and the passenger spoke in English. The judge admitted the consent form into evidence.

Upon searching the vehicle, officers discovered and seized twenty-six wax folds of heroin where the backseat passenger had shoved his hand.

For the most part, Officer Bezak's testimony was consistent with that of Officer Yarnell. Officer Bezak testified the reason the officers stopped Ms. Gomez's Pontiac was because "[t]he vehicle made an unsafe lane change and turn." He observed that the passengers appeared to be nervous and fidgeting, their hands were shaking, and "they were sweating quite a bit, but then again it was also hot out." He also observed that the rear seat passenger's

"right hand was cupped into a fist almost the entire time." The officer watched as the rear seat passenger "shove[d] something in between the passenger seat . . . wall and the seat cushion." When he removed his hand, it was empty.

Officer Bezak told Officer Yarnell what he had observed. Officer Yarnell obtained Ms. Gomez's consent to search the car, and during the search the officers found and seized the CDS.

The State also presented the testimony of Lieutenant Timothy Hoey, who arrived at the scene after the other officers had stopped Ms. Gomez's Pontiac. He confirmed that Ms. Gomez spoke in English.

The rear seat passenger, Ms. Gomez, and defendant testified. The rear seat passenger had been staying at the motel, temporarily, with his girlfriend. The day of his arrest, the passenger telephoned defendant and arranged to get a ride to Bound Brook. When defendant and his mother, Ms. Gomez, arrived at the motel, defendant called and said they were outside. The passenger found them and sat in the Pontiac's rear passenger seat. According to him, Ms. Gomez drove within the speed limit on Route 22 and did not have to change lanes to exit. She did, however, activate her signal before turning onto the exit ramp. It did not appear to him that Ms. Gomez cut off any other vehicle. She started to take a wrong exit, then signaled, and steered left to remain on Route 22. During the ride, Ms. Gomez and defendant spoke in Spanish.

According to the passenger, when the police spoke to Ms. Gomez after stopping her, her son acted as an interpreter. While one of the officers spoke with Ms. Gomez outside the car, the other officer kept his eye on the passengers in the car. The day was hot, probably ninety degrees, the Pontiac was not air-conditioned, and the rear passenger was sweating.

The passenger denied stuffing anything into the rear seat. Rather, he kept his hands in the officer's "eye view" at all times. In fact, the officer asked him why he was holding his hands like that, and he replied, "I don't want no issues with the police. I'm going to just keep my hands in your view so it doesn't get out of hand." He eventually got out of the car. The officer "pulled [defendant] out first." The officer apparently learned defendant had an outstanding warrant and said, "this is going to take a while." Due to the heat inside the car, the rear seat passenger asked if he could exit, and the officer permitted him to do so.

When the rear passenger exited the car, he waved his hands and told Ms. Gomez, in English, it was her right to refuse to consent to a search of her car. He heard Ms. Gomez tell the officer, in broken English, "'he's trying to tell me don't sign.'" The passenger heard no response from the police officer, and Ms. Gomez signed the form.



Ms. Gomez, who testified through a Spanish interpreter, said she spoke mostly Spanish and described her ability to speak English as "about twenty percent." On the day she was stopped by police, she had been driving normally on the right hand side of the road. She explained that when stopped by the officers she "didn't know [her] rights [and] didn't know what was going on." She said the officer "just gave [her] the paper and asked [her] to sign it" without explaining the form in Spanish. Because she was nervous as a result of the police encounter, she felt "obligated" to sign the consent form.

Defendant testified that his mother spoke little English. He also testified that following the traffic stop and his mother's removal from the car, he had a casual conversation with the police while he was still seated in the car. Defendant also explained that the officer asked him to step out of his car without stating his reasons for doing so. However, in response to the officer's request, defendant stated, "no problem, officer" before exiting the vehicle.

Defendant denied knowing there were drugs in his mother's car. He also denied that he intended to buy drugs that day from the rear seat passenger.

Following defendant's testimony, the State played a recorded statement defendant gave to law enforcement officers. After

waiving his Miranda<sup>2</sup> rights, defendant admitted he planned to purchase two bags of heroin from the backseat passenger at a discounted rate of \$7.<sup>3</sup>

At the conclusion of the hearing, defense counsel requested the opportunity to submit a written summation. The court granted the request. In written summations, defendants raised essentially three arguments: the motor vehicle stop was unlawful; the police did not have a reasonable and articulable suspicion of criminal activity to justify their request of Ms. Gomez to consent to a search of her Pontiac; and Ms. Gomez's consent was not voluntary.

The trial court issued a written opinion in which it denied defendant's suppression motion. The court found the officers had a reasonable and articulable suspicion to justify the traffic stop. The court also determined Ms. Gomez knowingly and voluntarily consented to a search of her Pontiac. The court did not, however, address whether the officers had a reasonable and articulable suspicion of criminal activity to justify their request for consent to search the vehicle.

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

<sup>3</sup> The backseat passenger offered defendant the heroin at a discounted price in exchange for a ride to Bound Brook.

On appeal, defendant first argues the trial court did not address whether the police had a reasonable and articulable suspicion to justify their request of Ms. Gomez to search her car. Within the context of this argument, defendant attempts to assert an arguably related but slightly different argument he did not expressly raise before the trial court – the police unduly prolonged a routine motor vehicle stop.

Our review of the grant or denial of a suppression motion is deferential. "[A]n appellate tribunal must defer to the factual findings of the trial court when that court has made its findings based on the testimonial and documentary evidence presented at an evidentiary hearing or trial." State v. Hubbard, 222 N.J. 249, 269 (2015). The deference extends to the trial court's credibility determinations. Ibid. That is so because factual findings and credibility determinations "are substantially influenced by [an] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Id. at 262 (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). We owe no special deference, however, to either a trial court's legal conclusions or "the consequences that flow from established facts." Id. at 263 (quoting State v. Gandhi, 201 N.J. 161, 176 (2010)).

Here, the trial court made no factual findings, credibility determinations, or legal conclusions concerning a critical issue raised by defendants on the suppression motion, namely, whether the officers had a reasonable and articulable suspicion of criminal wrongdoing to justify their request of Ms. Gomez to search her car, as required by State v. Carty, 170 N.J. 632, 635 (2002). The omission was critical. For example, the officers and the rear seat passenger gave contradictory testimony about whether the passenger stuffed something in the rear seat. The officers testified he did; he denied doing so in their presence.<sup>4</sup>

In view of the court's omission, we remand this matter for the court to make necessary credibility findings, findings of fact, and conclusions of law as mandated by Carty. If the court has an insufficient recall of the proceedings to make the required findings, or if the court, in its discretion, permits the parties to raise or factually develop issues not previously raised or decided, then the court shall conduct a new hearing. In the event of the latter, "[d]efendants should state the basis for a motion to suppress at the outset to allow for appropriate development of

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<sup>4</sup> The State includes in its brief's statement of facts that Officer Yarnell observed defendant's eyes had pinpoint pupils and he had track marks on his arm. The court recounted those facts at the sentencing proceeding; the State did not present them at the suppression hearing.

the record." State v. Bacome, \_\_\_ N.J. \_\_\_ (2017) (slip op. at 24-25).

In his supplemental brief, defendant argues the State did not demonstrate that the arresting officers had the "heightened caution" necessary to order defendant out of the car.<sup>5</sup> See id. (slip op at 24); State v. Smith, 134 N.J. 599 (1994). Because defendant did not raise the issue before the trial court, we decline to address it. "[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)); see also, State v. Legette, 227 N.J. 460, 467 n.1 (2017).

Lastly, defendant argues the factual basis for his guilty plea was inadequate to support the possessory CDS offense to which he plead guilty. We disagree.

A defendant may actually or constructively possess an object. State v. Spivey, 179 N.J. 229, 236 (2004) (citing State v. Schmidt,

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<sup>5</sup> The record is unclear as to whether the officers ordered defendant out of the car before or after they learned of the outstanding warrant.

110 N.J. 258, 270 (1988)). "A person actually possesses an object when he has physical or manual control of it." Ibid. (citing State v. Brown, 80 N.J. 587, 597 (1979)). A defendant "constructively possesses an object when, although he lacks 'physical or manual control,' the circumstances permit a reasonable inference that he has knowledge of its presence, and intends and has the capacity to exercise physical control or dominion over it during a span of time." Id. at 237 (citing Schmidt, supra, 110 N.J. at 270). The State's proofs in a given case may also "sustain [a defendant's] liability for possession as an accomplice or conspirator." Schmidt, supra, 110 N.J. at 273.


During defendant's plea colloquy, defendant admitted that he was aware the rear seat passenger brought heroin into his mother's car and he, defendant, intended to have the passenger share the heroin with him. These admissions establish defendant had knowledge of the presence of the CDS and intended and had the capacity to exercise physical control or dominion over the CDS during a span of time. Spivey, supra, 179 N.J. at 237.

The trial court's decision on remand may affect defendant's guilty plea. If the trial court determines the CDS seized by the officers should be suppressed, then the court shall also, at defendant's request, vacate the guilty plea and judgment of

conviction. If the trial court denies the suppression motion, then the guilty plea and judgment of conviction shall not be vacated.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION