SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0461-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NAIM GRIFFIN, a/k/a
NAIM I. GRIFFIN,

Defendant-Appellant.

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Argued January 25, 2023 – Decided February 27, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 15-04-0492, 16-06-1116 and 19-05-0810.

Lauren S. Michaels, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Lauren S. Michaels, of counsel and on the brief).

Sarah C. Hunt, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sarah C. Hunt, of counsel and on the brief).

PER CURIAM

Following the denial of his motion to suppress physical evidence, defendant Naim Griffin pleaded guilty to third-degree possession of a controlled dangerous substance (CDS) (heroin), N.J.S.A. 2C:35-10(a)(1); and second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b). The court sentenced defendant to a five-year custodial term with a forty-two-month period of parole ineligibility.

Defendant challenges his convictions and raises the following issues:

> POINT I
>
> MR. GRIFFIN INFORMED OFFICER WHALEN THAT HE WAS ENROLLED IN NEW JERSEY'S MEDICAL MARIJUANA PROGRAM AND REPEATEDLY ATTEMPTED TO SHOW HIS MEDICAL MARIJUANA CARD, AND THE OFFICER'S OBSERVATIONS WERE CONSISTENT WITH LAWFUL POSSESSION OF MARIJUANA. RATHER THAN ATTEMPT TO CONFIRM OR DISPEL MR. GRIFFIN'S CLAIM THAT HIS USE AND POSSESSION OF MARIJUANA WAS LAWFUL, THE POLICE FORGED AHEAD WITH AN UNCONSITUTIONAL WARRANTLESS SEARCH OF THE CAR AND TRUNK, AND THUS, THE MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED.
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> A. The Odor Of Raw Marijuana And Cigar Wrappers And Ash Were Consistent With Lawful Possession And Use Of Medical Marijuana, Thus The Search Of The

Car Was Unlawful, And All Of the Evidence Seized Must Be Suppressed.

B. Alternatively, Because There Was No Probable Cause To Extend The Search To the Trunk, Evidence Found There Must Be Suppressed.

POINT II

BECAUSE THE LAW LEGALIZING MARIJUANA DEMANDS RETROACTIVE APPLICATION, THE DENIAL OF THE SUPPRESSION MOTION MUST BE REVERSED. (Not raised below).

We have considered defendant's contentions in light of the record and the applicable law. We acknowledge defendant was a registered patient under the New Jersey Compassionate Use Medical Marijuana Act (CUMMA), N.J.S.A. 24:6I-1 to -30, and the officers' observations, including the smell of raw marijuana, could therefore have been consistent with lawful use. We disagree, however, defendant's registry status prohibited the officers from conducting a search, even for marijuana, where there was probable cause to believe the vehicle contained unlawfully obtained marijuana. Under the totality of the circumstances, we are satisfied the officers had probable cause to search the entire vehicle, including the trunk. Additionally, as the Legislature enacted the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:6I-31 to -56, after the challenged

stop and that statute applies prospectively, we find no merit in defendant's contention under Point II and therefore affirm.

I.

In May 2019, a Middlesex County Grand Jury returned an indictment charging defendant Naim Griffin and codefendants Jabril Muhammad and Davar Watson with third-degree conspiracy to possess CDS with intent to distribute, N.J.S.A. 2C:5-2, N.J.S.A. 2C:35-5(b)(3) (count one); third-degree possession of CDS (heroin), N.J.S.A. 2C:35-10(a)(1) (count two); third-degree possession of CDS (cocaine), N.J.S.A. 2C:35-10(a)(1) (count three); third-degree possession of CDS (heroin) with intent to distribute, N.J.S.A. 2C:35-5(a)(1), (b)(3) (count four); second-degree unlawful possession of a weapon (handgun), N.J.S.A. 2C:39-5(b) (count five); fourth-degree possession of a defaced firearm, N.J.S.A. 2C:39-3(d) (count six); second-degree possession of a weapon (handgun) during a drug crime, N.J.S.A. 2C:39-4.1 (count seven); and fourth-degree unlawful possession of handgun ammunition, N.J.S.A. 2C:58-3.3. Defendant thereafter filed a motion to suppress physical evidence seized after a motor vehicle stop.

At an evidentiary hearing on the motion, the State presented the testimony of Officer James Whalen of the Edison Police Department, his body camera footage of the stop, and footage from one other officer. Officer Whalen

recounted that on December 23, 2018, he pulled over a white Acura as it exited a Global Inn because it had tinted front and side windows and nonfunctioning license plate lights. After notifying dispatch, Officer Whalen approached the driver, who he identified as defendant, and noticed cigar wrappers, ash, and defendant "brush[ing] his pants off." While defendant retrieved his driver's license and registration, Officer Whalen smelled raw marijuana and asked defendant to exit the vehicle. Officer Whalen testified he has received formal training in distinguishing the odors of burnt and raw marijuana and has participated in over one hundred narcotics investigations.

After defendant exited the vehicle, Officer Whalen asked defendant when he and the passengers had last smoked marijuana in the car. At that point, defendant identified himself as a qualified medical marijuana patient under CUMMA and offered to produce his registry identification card. Defendant then admitted to having smoked marijuana approximately one hour before the stop, and that his hands smelled like burnt marijuana, but insisted he was legally allowed to possess and smoke marijuana. Defendant also stated there was no marijuana in the car. Officer Whalen placed defendant in the back of his patrol unit, not in handcuffs, and assured defendant he would look at defendant's registry card.

Officer Whalen then spoke to Watson, who was seated in the back passenger seat. Watson stated defendant picked him up from work and denied stopping at the Global Inn thereafter or making any other stops. The officers then removed Watson and Muhammad from the vehicle and initiated a search of the vehicle's interior, where they discovered raw marijuana in two small plastic jars and a clear plastic bag that appeared to have previously been vacuum-sealed. Defendant admitted to owning the marijuana in the plastic jars, but all three men denied ownership of the plastic bag of marijuana. The officers then discovered two bags of cocaine, a digital scale, and thirty-six clear plastic bags, which, according to Officer Whalen, are commonly used to package and distribute CDS.

The officers handcuffed all three men and placed them in patrol units and, while they did so, defendant asked Officer Whalen if the officers "could take the drugs . . . and let him go." According to Officer Whalen, based on the contraband discovered and defendant's request, he believed additional contraband was likely to be found in the trunk. Officer Whalen completed his search of the vehicle's interior, at which point he looked in defendant's wallet for the first time but did not specifically inspect any of the included cards. The officers then searched the trunk where they discovered a .38 caliber handgun,

four "Halloween-style masks," ammunition, additional cigar wrappers, rubber bands, and heroin.

Defendant also testified at the suppression hearing. According to defendant, his medical marijuana card was in his wallet and Officer Whalen would have discovered it had he looked at the cards individually. He also explained that when he told Officer Whalen there was no marijuana in the car, he understood Officer Whalen to be asking only about non-medical marijuana. Defense counsel asserted had Officer Whalen confirmed defendant's status as a medical marijuana user, he would have lacked probable cause to search the vehicle because defendant asserted CUMMA's affirmative defense for lawful possession. See N.J.S.A. 2C:35-18(a).

The court rejected defendant's argument and denied his motion in an oral decision. The court explained CUMMA's affirmative defense to criminal liability "is mutually exclusive from search and seizure law" and Officer Whalen was entitled to confirm or dispel whether he smelled lawfully obtained medical marijuana. Due to the smell of raw marijuana emanating from the vehicle and defendant's denial the car contained such marijuana, the court determined Officer Whalen had probable cause to initiate a search. The court also found the contraband discovered in the vehicle's interior was typical of drug trafficking

and distribution and concluded probable cause existed for the officers to search the trunk.

As noted, defendant thereafter pleaded guilty to third-degree possession of CDS (count two) and second-degree unlawful possession of a weapon (count five) and, in exchange, the State agreed to dismiss the remaining charges and recommend a three-year prison term with respect to count two and a concurrent five-year term subject to a forty-two-month period of parole ineligibility for count five. Consistent with the State's recommendation, the court sentenced defendant to an aggregate five-year custodial term with a forty-two-month period of parole ineligibility, as well as a concurrent four-year term for violating his existing probation. This appeal followed.

II.

In Point I.A., defendant argues "Officer Whalen did not have probable cause [to conclude] the car contained contraband or evidence of a crime when he undertook his search," and the evidence seized from the vehicle must therefore be suppressed. Specifically, defendant contends, in light of his registry status under CUMMA, Officer Whalen initiated his search "based only on observations entirely consistent with the legal use of marijuana."

In addition, relying on State v. Myers, 442 N.J. Super. 287, 330 (App. Div. 2015), defendant argues "detection of marijuana [cannot] provide probable cause that the crime of unlawful possession of marijuana has been committed" when the defendant has a registry identification card. Additionally, defendant cites to provisions of the "Attorney General Medical Marijuana Enforcement Guidelines for Police" (Dec. 6, 2012) (AG Guidelines), which he maintains, "at a minimum . . . profoundly influence what is reasonable conduct under the circumstances."

"Our standard of review on a motion to suppress is deferential -- we 'must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record.'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). We owe no deference, however, to "[a] trial court's interpretation of the law," and review "de novo" the "trial court's legal conclusions." State v. Lamb, 218 N.J. 300, 313 (2014).

It is well established that to comply with the federal and New Jersey Constitutions, police must obtain a warrant before conducting a search of the person or private property of an individual, unless a recognized exception to the warrant requirement applies. State v. Witt, 223 N.J. 409, 422 (2015). One such

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

Our Supreme Court has consistently held "a principal component of the probable cause standard 'is a well-grounded suspicion that a crime has been or is being committed.'" State v. Moore, 181 N.J. 40, 45 (2004) (quoting State v. Nishina, 175 N.J. 502, 515 (2003)). The Court has adopted the "totality of the circumstances" test set forth by the United States Supreme Court in Illinois v. Gates, 462 U.S. 213, 238 (1983), which "requires the court to make a practical, common-sense determination whether, given all of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" Moore, 181 N.J. at 46 (quoting Gates, 462 U.S. at 235).

Prior to the passage of CREAMMA on February 22, 2021, over two years after the stop in this case, "New Jersey courts ha[d] recognized that the smell of marijuana itself constitutes probable cause 'that a criminal offense ha[s] been committed and that additional contraband might be present.'" State v. Walker, 213 N.J. 281, 290 (2013) (second alteration in original) (quoting Nishina, 175

N.J. at 516-17). Thus, prior to CREAMMA's passage, the odor of marijuana gave rise to probable cause to conduct a warrantless search in the immediate area from where the smell emanated. Myers, 442 N.J. Super. at 296.

In 2010, the New Jersey Legislature enacted CUMMA, which decriminalized the possession of a certain amount of marijuana for medical use by qualifying patients. N.J.S.A. 24:6I-6(b). CUMMA affords an affirmative defense to patients who are properly registered under the statute and are subsequently arrested and charged with possession of marijuana. See N.J.S.A. 2C:35-18(a). The burden is on the defendant to prove the affirmative defense by a preponderance of the evidence. Ibid.

In Myers, 442 N.J. Super. at 302-03, we discussed CUMMA's impact on our State's search and seizure law. In that case, an officer arrested three occupants of a car after "detect[ing] the odor of burnt marijuana coming from" it. Id. at 291. During the search incident to that arrest, the officer found a handgun and a bag of marijuana in the defendant's jacket pockets. Ibid. The defendant argued that, due to the passage of CUMMA, "the odor of marijuana [could] no longer serve as a basis for probable cause that a marijuana offense [was] being committed." Id. at 290. We rejected the defendant's argument and concluded the smell of marijuana in the defendant's car gave the officer "the

right to arrest [the] defendant for committing an apparent marijuana offense in [the officer's] presence." Id. at 297.

In Myers, we noted Section 1.4 of the AG Guidelines advised police officers to "generally refrain from making an arrest" if "it reasonably appears to a police officer that the CUMMA affirmative defense applies." We explained, however, the passage of CUMMA did not overturn "the well-established New Jersey precedent allowing the odor of marijuana to establish probable cause." Id. at 301. Rather, we held "absent evidence the person suspected of possessing or using marijuana has a registry identification card, detection of marijuana by the sense of smell, or by other senses, provides probable cause to believe that the crime of unlawful possession of marijuana has been committed." Id. at 303.

Defendant's reliance on Myers is misplaced. Under Myers, an officer who detects marijuana has "probable cause that there is contraband in the immediate vicinity and that a criminal offense is being committed," Id. at 296 (quoting Walker, 213 N.J. at 287-88), unless the suspected use or possession of marijuana complies with CUMMA, id. at 303. The qualified patient has the burden to show the marijuana activity is authorized. N.J.S.A. 2C:35-18(a).

We reject defendant's argument Myers stands for the proposition that presentation of a registry identification card vitiates probable cause in all

instances, as in certain circumstances, like those presented here, officers may have probable cause to believe non-authorized marijuana possession or use is taking place regardless of the suspect's registry status. As noted in Myers, even when a qualified patient produces a registry identification card, officers may make appropriate inquiries to determine whether the suspected use or possession is authorized by CUMMA. 442 N.J. Super. at 303 (citing AG Guidelines at 5-9, 24).

Prior to initiating a search, Officer Whalen smelled raw marijuana emanating from the vehicle and observed cigar wrappers and ash. Only defendant asserted he was a registered patient, as there was no claim, prior to the stop or thereafter, that Watson or Muhammad were also registered. Thus, to assert the affirmative defense, defendant was required to establish the odor emanated from his lawfully obtained marijuana.

Prior to the search, however, defendant denied the vehicle contained any raw marijuana. In light of that denial, it was reasonable for Officer Whalen to explore the source of the raw marijuana odor and determine whether it emanated from marijuana belonging to one of the passengers, whose registry status was not established. Regardless of defendant's registry status, Officer Whalen's observations, defendant's failure to establish the odor emanated from lawfully

obtained marijuana, and his denial that the car contained raw marijuana, which was inconsistent with Officer Whalen's observations, provided probable cause the vehicle contained unlawfully obtained marijuana. We also note the officers were confronted with Watson's inaccurate statement he and defendant did not make any stops after defendant picked him up from work, as Officer Whalen observed the vehicle exit the Global Inn.

We also reject defendant's reliance on the AG Guidelines. Defendant specifically relies on the following underscored portions of Section 1.2 for the proposition that a CDS investigation must necessarily terminate upon proof that the CDS was lawfully obtained. That section provides:

> When police officers confront an individual using or possessing marijuana who claims to be authorized by CUMMA, they should treat the situation the same way that they have historically handled an encounter during which a person in actual or constructive possession of a controlled dangerous substance claims that the drug had been lawfully prescribed by a physician. Consider, by way of example, a situation where an officer learns during a street encounter that a person is in actual or constructive possession of some form of oxycodone (e.g., Percocet, or OxyContin)- a commonly-prescribed drug that is classified as a Schedule II controlled dangerous substance. While oxycodone can be lawfully prescribed, it is also a substance commonly subject to prescription fraud, abuse, and illicit diversion.

> If the person claims that the oxycodone formulation had been lawfully prescribed to [them], the officer would be expected to investigate the circumstances of that claim to determine whether the possession is in fact lawful. If, for example, the person was able to present proof of a bona fide prescription for the oxycodone, or the drug was in its original container and the label clearly showed that it had been dispensed to the suspect by a pharmacy, the officer would almost certainly refrain from seizing the oxycodone, and would not charge the person with unlawful possession of a controlled dangerous substance, unless there was specific and objective evidence of prescription fraud or abuse . . . .
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> [AG Guidelines at 4-5 (emphasis added).]

We do not read this regulation as requiring termination of a CDS investigation upon proof that any CDS in the suspect's possession is lawfully obtained. Indeed, although this regulation counsels restraint in seizing legally prescribed drugs, nothing requires police officers to turn a blind eye to evidence of illegally obtained CDS, as was present here. To the contrary, as noted, there was "specific and objective" evidence that defendant's vehicle contained illegally obtained marijuana and Section 1.2 therefore supports Officer Whalen's investigation of those circumstances.

Defendant also relies on the following language in Section 1.4:

> Ordinarily, the applicability of an affirmative defense is decided by a prosecutor, judge, or jury only after formal charges have been brought, rather than by a

> police officer at the scene of a possible offense. However, as a matter of sound law enforcement policy, and in order to conserve resources by avoiding unnecessary arrests, searches, seizures, and prosecutions, and consistent with the general policy not to interfere with CUMMA-authorized marijuana possession or use whenever feasible, where it reasonably appears to a police officer that the CUMMA affirmative defense applies (e.g., the person in possession of marijuana presents a valid medical marijuana registry identification card and otherwise appears to be complying with all of the below-described statutory requirements), an officer should generally refrain from making an arrest, filing criminal charges, and/or seizing the marijuana or associated paraphernalia.
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> Police, in other words, should not follow an "arrest first, let the court figure it out later" approach when a person in possession of marijuana claims to be exempt from criminal liability under CUMMA. Rather, the officer should, whenever feasible, conduct an on-scene investigation to try to confirm or dispel the basis for the affirmative defense. In conducting this on-scene investigation, the officer should consider all relevant circumstances, including especially the factors that are set forth in Section 5 of these Guidelines.
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> [AG Guidelines at 6-7 (emphasis added).]

We are satisfied Officer Whalen's conduct conformed to Section 1.4 as his search of defendant's vehicle was reasonably calculated to "confirm or dispel the basis for the affirmative defense." Additionally, Section 5 of the Guidelines militated in favor of Officer Whalen's investigation. Even if Officer Whalen

had located and credited defendant's registry identification card, he would not have been able to examine the source of the raw marijuana odor absent a search of the vehicle because defendant denied that the vehicle contained any such marijuana. See AG Guidelines at 21-22.

We also note the following underscored portions of Section 7.2 of the AG Guidelines directly undermine defendant's argument:

> Because CUMMA establishes an affirmative defense that must be proved by the defendant by a preponderance of the evidence, see N.J.S.A. 24:6I-6(a) and N.J.S.A. 2C:35-18, when an officer develops reasonable articulable suspicion or probable cause to believe that a marijuana offense is being or has been committed (e.g., a plain view observation or "plain smell" of marijuana), that reasonable articulable suspicion or probable cause does not dissipate merely because a suspect asserts that the detected marijuana is medical marijuana possessed in accordance with CUMMA. . . . Rather, an officer continues to have reasonable articulable suspicion or probable cause for purposes of conducting a criminal investigation unless and until the officer is reasonably satisfied from the on-scene investigation that the CUMMA affirmative defense is applicable.
>
> An officer, in other words, is not required to rely on the suspect's representation of [their] status as a qualifying patient or primary caregiver, or [their] representation that marijuana that is present is being possessed in accordance with CUMMA. Rather, an officer is permitted to continue the criminal investigation so as to be able make [their] own determination of the validity of the suspect's claim and the applicability of the

> CUMMA affirmative defense to the suspect's present conduct. Any such on-scene investigation need not be limited to verifying that a person is registered with the Medicinal Marijuana Program, since a registered qualifying patient or primary caregiver may engage in marijuana-related conduct that falls outside the CUMMA exemption from criminal liability.
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> [AG Guidelines at 23-24 (emphasis added).]

Here, Officer Whalen had limited reason to believe the odor he detected derived from legally obtained marijuana. As noted, defendant informed Officer Whalen he had a registry identification card but did not take ownership over any raw marijuana in the vehicle prior to the search. Although Officer Whalen did not verify defendant's registry status, the guidelines make clear he was entitled to investigate the source of the marijuana odor, as it was likely either the defendant or the passengers "engage[d] in marijuana-related conduct that [fell] outside the CUMMA exemption from criminal liability." Id. at 24.

In sum, the court did not err in denying defendant's motion to suppress because there was competent credible evidence in the record before the court to conclude Officer Whalen had probable cause before initiating a search of the vehicle's interior.

III.

Alternatively, in Point I.B., defendant contends "extending the search of the car to include the trunk was unreasonable because Officer Whalen had no probable cause to support a reasonable belief that the trunk contained contraband," and the evidence seized from the trunk must therefore be suppressed. Specifically, defendant argues the officers had already discovered the source of the marijuana odor and there was no evidence to suggest an odor emanated from the truck. Relying on State v. Wilson, 178 N.J. 7, 11, 16 (2003), defendant asserts "that a scale and other drugs were found in the car is not sufficient justification for extending the search to the trunk." We disagree.

"A police officer must not only have probable cause to believe that the vehicle is carrying contraband but the search must be reasonable in scope." State v. Patino, 83 N.J. 1, 10 (1980). In that regard, "[i]t is widely recognized that a search, although validly initiated, may become unreasonable because of its intolerable intensity and scope." Id. at 10-11 (citing Terry v. Ohio, 392 U.S. 1, 19 (1968)). Thus, "the scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." Terry, 392 U.S. at 19 (quoting Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring)). In other words, "[t]he 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." State v. Esteves, 93 N.J. 498, 507 (1983).

We are satisfied probable cause existed for the officers to extend their search to the trunk. As noted, probable cause requires a fair probability, given the totality of the circumstances and common sense, that contraband may be found in the area searched. Moore, 181 N.J. at 46. Here, in addition to the marijuana claimed to have been legally obtained, the officers discovered a plastic bag of marijuana, two bags of cocaine, a digital scale, cigar wrappers, and thirty-six clear plastic bags. Officer Whalen testified such materials are "consistent with packaging for distribution of CDS."

According to Officer Whalen, he also considered defendant's request the officers confiscate the contraband found in the vehicle and let him go as indicative that the trunk contained additional contraband. These combined circumstances, given Officer Whalen's training and experience in over one hundred narcotics investigations, led him to reasonably believe defendant was engaged in drug distribution activities, not just possession of a small amount of CDS for personal use, and that evidence of distribution may be found in the trunk.

Defendant's reliance on Wilson is misplaced. In that case, officers arrested the defendant due to outstanding arrest warrants after he exited a vehicle in which he was a passenger. 178 N.J. at 11. While handcuffing the defendant, the officers found one small bag of marijuana and six small bags of cocaine. Ibid. We determined, and the Supreme Court affirmed, such circumstances did not support probable cause to the search the vehicle. Id. at 14-15. The Court noted "[t]he only incriminating conduct was that drugs dropped from [the] defendant's clothing when he was being handcuffed," "[t]here was no testimony that the amount of drugs on [the] defendant's person caused a suspicion that other drugs would be present in the vehicle," and "there was no testimony that the drugs found on [the] defendant were possessed or packaged in a fashion that furnished the officers with a well-grounded suspicion that [the] defendant was about to engage in illegal distribution." Id. at 16-17. The circumstances here are distinguishable, as the contraband discovered in the vehicle's interior sufficiently supported Officer Whalen's belief defendant engaged in drug distribution activities.

We are satisfied the officers' search of defendant's car was proper in initiation and scope. We therefore find no error in the court's denial of defendant's suppression motion.

IV.

In Point II, defendant argues, for the first time before us, the evidence seized from defendant's vehicle must be suppressed because, under CREAMMA, the smell of marijuana no longer constitutes reasonable articulable suspicion of a crime, except in limit circumstances. N.J.S.A. 2C:35-10c. Among other things, CREAMMA partially legalized the "possessing" and "transporting" of small quantities of cannabis. N.J.S.A. 2C:35-10a. Defendant acknowledges CREAMMA was passed after the stop challenged in this case but argues the statute should apply retroactively because, according to defendant, (1) the statute's language evinces the Legislature's intent the statute apply retroactively, and (2) the statute is ameliorative.

Procedurally, defendant failed to raise this argument in the trial court. We generally decline to consider questions or issues not first presented in the trial court when an opportunity for such a presentation is available, unless the issues raised on appeal concern jurisdiction or matters of great public interest. State v. Robinson, 200 N.J. 1, 20 (2009) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Defendant's contentions under Point II do not satisfy either of the Nieder exceptions. For the purpose of completeness, we

nevertheless address defendant's claims and determine they are substantively without merit.

"Our courts 'have long followed a general rule of statutory construction that favors prospective application of statutes.'" State v. Lane, 251 N.J. 84, 94 (2022) (quoting Gibbons v. Gibbons, 86 N.J. 515, 521 (1981)). "The presumption is overcome only if we 'find the Legislature clearly intended a retrospective application of the statute through its use of words so clear, strong, and imperative that no . . . meaning can be ascribed to them other than to apply the statute retroactively.'" Id. at 94-95 (alteration in original) (quoting State v. J.V., 242 N.J. 432, 443-44 (2020)). Circumstances in which a statute may apply retroactively include when the Legislature has evinced such an intent, the statute is "ameliorative or curative," or the "the expectations of the parties may warrant retroactive application of the statute." Id. at 95 (quoting Gibbons, 86 N.J. at 522-23). "We look to those exceptions only in instances where there is no clear expression of intent by the Legislature that the statute is to be prospectively applied only." Ibid. (quoting J.V., 242 N.J. at 444).

We have previously held CREAMMA applies only prospectively. State v. Cambrelen, 473 N.J. Super. 70, 76 n.6 (App. Div. 2022). Additionally, the Legislature provided N.J.S.A. 2C:35-10c "shall take effect immediately." P.L.

2021, c. 16, § 87(a). The Legislature's use of such language "connotes prospective application." Lane, 251 N.J. at 96. See also Pisack v. B & C Towing, Inc., 240 N.J. 360, 371 (2020) (holding the language "shall take effect immediately" "bespeak[s] an intent contrary to, and not supportive of, retroactive application") (quoting Cruz v. Cent. Jersey Landscaping, Inc., 195 N.J. 33, 48 (2008)). Thus, the Legislature evinced a clear intent CREAMMA be prospectively applied, and the exceptions relied upon by defendant are inapplicable. See Lane, 251 N.J. at 95.

To the extent we have not specifically addressed any of defendant's arguments, it is because we have concluded they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirm.