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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2723-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AZMAR B. BEY, a/k/a
AZMAR BEY,

Defendant-Appellant.

Argued April 29, 2024 – Decided May 28, 2024

Before Judges Gilson and Jacobs.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 22-02-0147.

Margaret Ruth McLane, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Margaret Ruth McLane, of counsel and on the brief).

Meagan E. Free, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Meagan E. Free, on the brief).

PER CURIAM

Following denial of his motion to suppress a handgun seized from the car he was driving, defendant, Azmar B. Bey, pled guilty to second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b). The State waived the mandatory prison time required by the Graves Act, N.J.S.A. 2C:43-6, et seq., and defendant was sentenced to three years of probation. Pursuant to terms of the plea agreement, the trial court dismissed all remaining charges in the indictment. Defendant now appeals from the August 30, 2022 order denying his motion to suppress the handgun seized without a warrant, arguing there were no exceptions justifying the warrantless search and seizure. We agree and reverse.

I.

We summarize the facts from the record on the motion to suppress. That record consists of a one-day evidentiary hearing at which a single witness testified, Patrol Officer Asif Riaz (Riaz) of the Jersey City Police Department. The trial court also reviewed audio-visual recordings taken from Riaz's body-worn camera, which were played at the hearing.

In the early evening of January 14, 2021, Riaz and his partner were on patrol in a marked police car. They observed defendant, who was driving a 2011

Chevrolet Impala, run a stop sign and pulled him over. When asked for his driving credentials, defendant was unable to produce a valid driver's license or insurance card. Defendant claimed his aunt had his driver's license at a nearby residence. Scrawling through his cellphone, he stated his cousin had the insurance card and offered to call him for it. Riaz did not respond directly to this offer, instead asking again about defendant's driver's license. Defendant then produced an expired temporary registration tag.

Next, the officer requested defendant's name and date of birth, which were provided. After running a computer search, Riaz learned defendant's driver's license was suspended. He also learned defendant had five open municipal court arrest warrants. Riaz arrested defendant and placed him in the back of his patrol car.

With defendant secured, Riaz radioed headquarters, transmitting the car's vehicle identification number (VIN) to ascertain the vehicle's history. He then began a search of the interior of the Impala for the stated purpose of locating defendant's insurance information. He first checked the driver's seat and surrounding area, finding nothing. Next, he opened and emptied the contents of a center console storage compartment, where he found a Ziploc bag containing suspected marijuana. He then searched the rear passenger seat area, with

negative result. He continued to the front passenger seat area, and ultimately the glove compartment, where he discovered a handgun. At a point almost four minutes from the initial search, but one-and-a-half minutes after the handgun's discovery and the search's termination, a police radio broadcasted, ". . . [s]o that VIN is coming back to a 2011 Chevy Impala four-door color black, negative stolen, no plates registered."

Defendant was indicted for (1) second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b); (2) second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a); and (3) fourth-degree possession of hollow point bullets, N.J.S.A. 2C:39-d(f).

In its ruling after the suppression hearing, the trial court credited Riaz's testimony that he observed defendant commit a traffic infraction, justifying the stop. The court further accepted Riaz's testimony that, "[o]nce we placed him in the back [of the police vehicle,] we went through the car to look for an insurance card." Riaz continued:

As I'm looking for an insurance card[,] I pulled out a Ziploc bag that had three small bags of green vegetation, suspected marijuana, inside there. So I grabbed that. And now[,] since there's raw marijuana inside the car[,] I went into the driver's side rear looking for raw marijuana. I didn't find any back there. So then I went to the passenger's side rear. There was nothing back there. Then I entered into the glove box, and once

I opened the glove box[,] I saw the handgun and said,
"oh shit."

In concluding that the search of the vehicle was constitutionally valid, the trial court relied principally on State v. Terry, 232 N.J. 218 (2018). In Terry, the Supreme Court reaffirmed its decision in State v. Keaton, 222 N.J. 438 (2015), that "when a driver is unwilling or unable to present proof of a vehicle's ownership, a police officer may conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle." Id. at 222. This exception to the warrant requirement is alternately referred to as the "registration search exception" or "credentials exception." Id. at 223, 229. At its core, "[t]his limited registration search exception is . . . rooted in the common-sense notion that the inability or unwillingness of a driver to produce a vehicle's registration may raise 'a reasonable suspicion that the vehicle was stolen.'" Id. at 231 (citing State v. Holmgren, 282 N.J. Super. 212, 215 (App. Div. 1995)).

The trial court observed that ". . . ideally, the officers should have started their search with the glove box; however, the fact that the officers first searched other areas of the car where insurance information might be found does not nullify application of the registration search exception. That exception permitted the officers to search the glove box of the vehicle, and that search of the glove box yielded the firearm at issue in this case." (Emphasis in original).

II.

Defendant submits a single argument on appeal:

THE LIMITED REGISTRATION SEARCH
EXCEPTION DOES NOT JUSTIFY THIS
WARRANTLESS SEARCH.

When reviewing a decision on a motion to suppress, appellate courts defer to a trial court's factual findings and will uphold those findings when they are supported by sufficient, credible evidence in the record. State v. Tiwana, 256 N.J. 33, 40 (2023) (citing State v. A.M., 237 N.J. 384, 395 (2019)). "[F]actual findings based on a video recording or documentary evidence" are reviewed under the same standard. State v. S.S., 229 N.J. 360, 381 (2017). In contrast, appellate courts do not defer to a trial court's legal conclusions, which are reviewed de novo. State v. Tiwana, 256 N.J. at 40 (citing State v. Rockford, 213 N.J. 424, 440 (2013)).

The United States and New Jersey Constitutions guarantee that individuals shall be free from "unreasonable searches and seizures." U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. "Generally, a warrantless search or seizure is invalid absent a showing that it 'falls within one of the few well-delineated exceptions to the warrant requirement.'" State v. Alessi, 240 N.J. 501, 517 (2020) (quoting State v. Mann, 203 N.J. 328, 337-38 (2010)).

We accept the trial court's finding that Riaz's testimony was credible. We differ as to the legal ramifications of that testimony. Riaz testified that the sole purpose of his search was to look for defendant's insurance information. At the time the officer conducted the search, defendant had been arrested, was in the police car, and was not going to be driving. There was no justification to search for defendant's insurance information.

There are no cases extending a warrantless search to look solely for insurance information. See State v. Johnson, 476 N.J. Super. 1, 32, n.7 (App. Div. 2023). In Johnson, we noted the limited scope of the registration exception:

We are aware of no precedent in New Jersey or any other jurisdiction that authorizes a warrantless search to look solely for an insurance identification card. Rather, in the reported cases where an insurance identification card is mentioned, including Terry, the challenged police conduct also involved a search for the vehicle registration certificate.

[Ibid.]

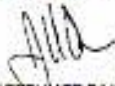
The facts in this case do not support an expansion of the registration exception to include a search for insurance information because defendant was already under arrest and the car was effectively impounded. Under such circumstances, there was no legitimate concern the car might be driven away.

Having held that there was no legal basis to initiate a search for insurance information, we do not reach defendant's argument that the registration exception should be held to be unconstitutional. "As a general rule, our courts strive to avoid reaching constitutional issues unless they are 'imperative to the disposition of the litigation.'" Strategic Env't Partners, LLC v. N.J. Dep't of Env't Prot., 438 N.J. Super. 125, 147 (App. Div. 2014) (quoting Comm. to Recall Robert Menendez v. Wells, 204 N.J. 79, 96 (2010)), aff'd, 221 N.J. 218 (2015). "A fundamental principle of judicial construction is that courts must avoid deciding a constitutional issue if, by disposing of other issues in the case, the constitutional question may be rendered moot." Berkley Arms Apartment Corp. v. City of Hackensack, 6 N.J. Tax 260, 266 (1983).

Moreover, there was no indicia that defendant was engaged, or about to be engaged, in illegal activity. Riaz did not articulate probable cause or suspicion that contraband was in the vehicle. So, the automobile exception did not apply. See State v. Courtney, 478 N.J. Super. 81, 93 (App. Div. 2024) (explaining that to conduct a search under the automobile exception, the State must "prove that probable cause to believe the vehicle contains contraband or other evidence of unlawful activity arose spontaneously and unforeseeably") (citing State v. Witt, 223 N.J. 409, 446-48 (2015)). In that regard, the unknown

presence of marijuana did not justify the search because Riaz had no articulable suspicion that marijuana was in the car before he started his search. Additionally, the marijuana found in the center console did not justify a further search of the car.¹ Finally, as the entire search was not constitutionally permitted, its scope and duration are not relevant considerations. Reversed and remanded. 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

¹ The month after defendant's arrest, on February 22, 2021, the Legislature enacted the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:6I-31 to -56. Under CREAMMA, an odor of marijuana cannot create reasonable articulable suspicion or probable cause to conduct a warrantless search. N.J.S.A. 2C:35-10c(a). CREAMMA, however, only applies prospectively. See State v. Cohen, 254 N.J. 308, 328 (2023) (explaining that CREAMMA does not apply retroactively).