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SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, CRIMINAL PART
IND. 23-08-0875-I
PROS. FILE MER-22-3178

STATE OF NEW JERSEY,

Plaintiff,

v.

NAZIR MCKINNON,

Defendant.

Decided: January 9, 2025

THOMAS JAMES LIVECCHI, ESQ., special deputy attorney general and acting assistant prosecutor, attorney for State of New Jersey (Mercer County Prosecutor's Office).

WALLACE R. WADE, II, ESQ., attorney for Nazir McKinnon, (Office of Wayne Powell Attorney, PC).

OSTRER, J.A.D. (retired and temporarily assigned on recall):

Defendant moves to suppress a handgun. A police canine, trained to detect gunshot residue, alerted to the "target odor" outside the open driver's door, leaped into the driver's seat, and pressed his nose to the console area. Police then

warrantlessly searched defendant's car and seized a .40 caliber semi-automatic handgun and ammunition from the center console. All this occurred minutes after police stopped defendant for an alleged tinted window violation and removed him from his vehicle. In doing so, they prevented him from closing the driver's side door, which remained open while they questioned him and while the canine circled the car.

That last fact – police prevented defendant from closing the door, so it remained open during the canine sniff -- dooms this search and seizure.

Generally, a police canine's sniff around a car's exterior is not a search because it does "not involve the unveiling of noncontraband items that would otherwise remain unexposed to public view and signal[s] only the presence or absence of illegal items." State v. Dunbar, 229 N.J. 521, 539 (2017). But a canine sniff may become a search if police affirmatively facilitate the canine's efforts. That is what police did here, by preventing defendant from closing his door, thereby exposing the car's interior to the investigating canine even while the animal remained outside the car. Notably, the canine did not alert to the target odor while beside the closed passenger-side doors.

As police had not yet acquired probable cause to believe defendant unlawfully possessed a handgun, the police-facilitated canine search of defendant's car was unlawful. Also unlawful, under the fruit-of-the-poisonous-tree doctrine, was the

officer's subsequent search of the console and seizure of the weapon. Therefore, defendant's motion to suppress is granted.

I.

The principal witnesses at the testimonial hearing were Trenton Police Department Patrol Officer Walter DeLeon,[1] who described the motor vehicle stop; Trenton detective Robert Batestrieri, who described the steps leading to the canine's alert to suspected gunshot residue; and defendant, who described the stop from his perspective. The State also introduced into evidence video of the motor vehicle stop. All witnesses were credible although the law enforcement witnesses' recollections of some details of the September 26, 2022, stop were imprecise and needed to be refreshed by video and reports.

Defense counsel conceded in oral argument that police lawfully stopped defendant for driving with excessively tinted windows. Officer DeLeon testified that all the side windows were down when he approached defendant's sedan, but the front windshield (as well as the rear windshield) were heavily tinted.[2] The officer said defendant appeared nervous as he gathered his motor vehicle documents.

[1] Although Officer DeLeon held the rank of detective when he stopped defendant, the court will refer to him by his position when he testified.

[2] N.J.S.A. 39:3-74 prohibits operation of a vehicle with excessive tinting on the front windshield or the front side windows. State v. Smith, 251 N.J. 244, 253, 259-60 (2022). To violate the law, the windows must be "so darkly tinted that police cannot clearly see people or articles within the car." Id. at 265.

Defendant agreed; he testified he was "nervous and shaking" because multiple officers were present.

Officer DeLeon credibly asserted that before defendant reached into the glove box, he reached to the floorboard. But the officer and his partner saw nothing in plain view after his partner illuminated the area.

Upon checking defendant's credentials, Officer DeLeon learned that defendant was a prior "weapons offender." That is when the officer asked a partner to remove defendant from the car. The second officer opened the door and escorted defendant from his vehicle. Officer DeLeon asked defendant for consent to search the car. The officer said the alleged high crime area, defendant's nervous behavior and his prior weapons offense aroused his suspicion that contraband or evidence of a crime might be found there. After defendant withheld consent, Officer DeLeon told defendant that a police dog would be called. Officer DeLeon then summoned Det. Balestrieri and his gunshot-residue-detecting canine, "K-9 Vita" ("Vita").

Defendant testified he expected to close the door upon exiting his car, as was his usual practice. But Officer DeLeon's partner prevented him by restraining his hands while escorting him away from the car. Officer DeLeon did not dispute defendant's testimony on that point. The driver's door, which faced passing traffic, remained open while police questioned defendant. And it stayed open when Det.

Balestrieri arrived with Vita. The court concludes the door was open because the police arranged to keep it open, by preventing defendant from closing it.

Officer DeLeon stood outside his police vehicle for over three minutes after defendant was removed from his car, without taking any steps to prepare a ticket for the tinted window violation. Around the time Det. Balestrieri arrived, Officer DeLeon entered his vehicle and got to work preparing the ticket on his computer terminal.

As depicted on video in evidence, Det. Balestrieri walked with Vita beginning at the hood on the passenger side, then alongside the passenger side doors, the trunk, and driver's side, searching for the target odor – the scent of gunshot residue indicative of a firearm's presence. According to the detective, and as visible on the video, Vita did not alert as she walked near the car's passenger side, although she did so twice.

Rather, Vita alerted to the target odor only when standing near the driver's open door. Det. Balestrieri testified that the canine first detected the target odor while standing outside the vehicle. He could tell that by a change in her breathing and a "head snap." Although these signs were imperceptible to the court viewing the video evidence with visual and audio imperfections, the court credits the detective, who testified that he has accompanied the canine on hundreds of searches and trained with her extensively. The court is persuaded by a preponderance of the

evidence that the detective, based on his experience, detected and accurately interpreted Vita's movements and reactions.[3] Defendant does not challenge Vita's reliability.

Almost immediately after her initial indication, Vita jumped into the vehicle's driver's seat. Defendant argues that Vita jumped into the car to search for the target odor she had not yet detected. But Vita did not roam the vehicle. The court is persuaded that Vita entered the car to pursue the odor she already detected. Det. Balestrieri testified that he did not encourage the canine to enter the vehicle, nor had he trained her to jump into cars. On the other hand, he did not use his leash to restrain her from entering.

Once inside the car, Vita did not further indicate the odor's source, which, the detective explained, Vita would do by freezing her nose on the place closest to the source. He said, "As she is attempting to source the odor, she may lose it." So, the detective prompted Vita to leave the vehicle with a slight tug on the leash and continued walking with her outside the car's exterior until they reached the car's

[3] Defendant does not challenge Vita's reliability as a detector of gunshot-residue odors. Cf. Florida v. Harris, 568 U.S. 237, 247 (2013) (stating "[a] defendant . . . must have an opportunity to challenge . . . evidence of a dog's reliability"); State v. Morgan, 479 N.J. Super. 420, 424 (App. Div. 2024) (holding that a canine's field and health reports may be relevant to assessing the reliability of the canine's alert and remanding for consideration of defendant's discovery request).

hood. Then he reversed course and walked Vita counter-clockwise past the driver's side again.

When the canine reached the open door a second time, she again alerted outside, according to the detective's credible testimony. Vita jumped into the vehicle again; and provided, according to the detective, "a brief positive indication on the center console, by freezing her nose." But then she must have lost the odor, according to the detective. So, she came out of the vehicle.

The detective and the canine then continued in a counter-clockwise circuit, past the car's trunk, passenger side and hood, until they reached the driver's side door for the third time. According to the detective's credible testimony, Vita alerted to the odor yet again. Vita jumped into the vehicle. This time, she froze her nose on the center console – although that is not visible on the video -- looked at the detective and barked. Det. Balestrieri was convinced that the target odor's source was the center console. Roughly four minutes had elapsed since the detective and Vita arrived.

Det. Balestrieri rewarded Vita with a toy and informed the other officers present of Vita's alert. Officers searched the vehicle and, eventually, Officer DeLeon spotted a weapon hidden under the housing of the gear-shifter in front of the center console. Officers removed the weapon and ammunition.

Although the court finds that Vita first detected the target odor from the car's exterior, she did so only because the driver's side door remained open. Although the side windows were open, the police canine failed to signal when she twice passed by the passenger side. Yet that was no farther from the center console than the driver's side door. The court finds that the open door was the determining factor. Had defendant been permitted to close the driver's door, the court is convinced that Vita would not have detected the target odor.

Defendant was eventually indicted and charged with second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); second-degree certain person not to possess a firearm, N.J.S.A. 2:39-7(b)(1); and fourth-degree unlawful possession of hollow point bullets, N.J.S.A. 2C:39-3(f)(1).

II.

The novel question posed here is: may police prevent an exiting driver from closing the car door, thereby enabling a police canine standing outside the vehicle to detect odors in the interior that it could not detect had the door been closed? The court concludes police may not.[4]

[4] This case does not present the issue whether a police canine may, without invading a person's constitutional rights, "instinctively" enter a vehicle and only afterwards detect the odor of contraband. For example, in United States v. Pierce, 622 F.3d 209, 214-15 (3d Cir. 2010), the court held that "a trained narcotic dog's instinctive action of jumping into the car does not violate the Fourth Amendment"; the court defined "instinctive" to mean "without assistance, facilitation, or other intentional action by its handler." In United States v. Winningham, 140 F.3d 1328, 1329 (10th

Under both the Fourth Amendment and Article I, paragraph 7 of the New Jersey Constitution, an officer may routinely order a driver out of a lawfully stopped car to assure the officer's safety. See Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (applying the Fourth Amendment); and State v. Smith, 134 N.J. 599, 610-11 (1994) (applying New Jersey Constitution, Art. I, para. 7). Also, "[a]s a corollary and reasonable safety measure," an officer may "open the door as part of issuing a proper order to exit." State v. Mai, 202 N.J. 12, 23 (2010). The State need not make a particularized showing that the officer's safety was at risk; it is a "per se rule." Smith, 134 N.J. at 618.

The Mimms Court reasoned that the officer's safety interest outweighed the minimal "additional intrusion" on the detained driver's liberty. 434 U.S. at 111. "The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it." Ibid. In weighing the competing interests,

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Cir. 1998), the court, noting law enforcement's "desire to facilitate a dog sniff of the van's interior," held that an unlawful search occurred when a police canine alerted to drugs after entering the vehicle, because the agents left the door open, the handler unleashed the canine, and police lacked reasonable suspicion. As discussed below, the Idaho Supreme Court in State v. Randall, 496 P.3d 844 (Idaho 2021) persuasively rejected the "instinctive" exception, holding that when a police canine alerts only after entering a vehicle, it commits a trespass that violates the Fourth Amendment. Here, the State conceded that if the canine first alerted to the target odor only after entering the car, then the subsequent search would be unlawful. Second, as noted, this court finds that the police canine here first detected the target odor while outside the vehicle.

the Court assumed "[t]he driver is being asked to expose to view very little more of his person than is already exposed." Ibid. As for opening the door, the Mai Court stated, "no meaningful or relevant differences exists between the grant of authority to order an occupant of a vehicle to exit the vehicle and the authority to open the door as part of issuing that lawful order." 202 N.J. at 23.

Also, it has been held that even without an accompanying order to exit, when a car's heavily tinted windows obscure the interior so an officer could not tell if occupants were armed, the officer may, for safety's sake, open a door and "without crossing the plane of the vehicle, visually inspect its interior." Wayne R. LaFave, 4 Search & Seizure § 9.6(a) (6th ed. 2024) (quoting United States v. Stanfield, 109 F.3d 976, 981 (4th Cir. 1997)).

In addition to enhancing officer safety, ordering a driver out of a car has incidental benefits to law enforcement. It exposes to plain view more of the car's interior than is visible when the door is closed. Cf. State v. Woodson, 236 N.J. Super. 537, (App. Div. 1989) (noting that an open door subjects a driver's "private affairs" to "outside scrutiny"). And, generally, police are entitled to look. "There is no reasonable expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers." Texas v. Brown, 460 U.S. 730, 740 (1983). For that reason, "a simple observation into the interior of an automobile by

an officer located outside the automobile is not a 'search' within the meaning of the Fourth Amendment." State v. Foley, 218 N.J. Super. 210, 215 (App. Div. 1987); See also United States v. Bynum, 508 F.3d 1134, 1137 (8th Cir. 2007) (stating that "[n]either probable cause nor reasonable suspicion is necessary for an officer to look through a[n] . . . open door . . . of a vehicle so long as he or she has a right to be in close proximity to the vehicle").

But these precedents do not entitle an officer to stop a driver from closing the car door after exiting the car, so the officer may get a better look at the car's unoccupied interior absent probable cause to search. Police may not physically manipulate a scene to get a better plain view. See Arizona v. Hicks, 480 U.S. 321, 324-25 (1987) (stating police engaged in an unlawful search when they moved an item of audio equipment to view serial numbers that were otherwise not in plain view).

Nor may an officer, absent a basis for warrantlessly entering a home, put his foot in an apartment doorway, to prevent the resident from closing the door he had just opened, after discovering the person knocking was a police officer. State v. Lewis, 116 N.J. 477, 480-81, 485-86 (1989). In Lewis, the officer blocked the defendant from closing the door and only afterwards observed suspected drugs on a kitchen table. Id. at 480-81. The Court held that the observation was not a basis for entering the apartment because the officer was not lawfully in the viewing area. Id.

at 485-86. Likewise, a sergeant unlawfully entered a defendant's home when she wedged herself in the doorway to prevent the defendant from closing the door. State v. Jefferson, 413 N.J. Super. 344, 350-51 (App. Div. 2010). As one federal court aptly stated, "We think society would recognize a person's right to choose to close his door on and exclude people he does not want within his home." United States v. Berkowitz, 927 F.3d 1376, 1387 (7th Cir. 1991).

Just as an officer may not scan a home by warrantlessly blocking a resident from closing a door, an officer may not scan an automobile's interior by preventing a driver from closing a car door. The court recognizes that Lewis and Jefferson involved doorways to homes. And "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," United States v. United States District Court, 407 U.S. 297, 313 (1972). See also Lewis, 116 N.J. at 483.

But automobile interiors are still private, constitutionally protected spaces. "Although motorists have a lesser expectation of privacy in their vehicles as compared to their homes, vehicle interiors are still protected against unreasonable intrusion by police." State v. Johnson, 476 N.J. Super. 1, 25 (App. Div. 2023). "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." Delaware v. Prouse, 440 U.S. 648, 662 (1979). And, as

the United States Supreme Court made clear in United States v. Jones, 565 U.S. 400, 404 (2012), a search occurs not only when the government violates a reasonable expectation of privacy; it also occurs when the government "physically occupie[s] private property for the purpose of obtaining information." Thus, a search occurred when a GPS device was attached to a person's vehicle. Ibid.

As noted, the general interest in promoting officer safety justifies the per se rule permitting officers to order lawfully stopped drivers to exit their vehicles and permitting those officers to facilitate the drivers' exit by opening the door. But officer safety generally does not justify keeping the door open, contrary to the driver's wishes, after the driver has left the vehicle.[5] To the contrary, keeping the open door may pose a hazard to passing vehicles. And while requiring the driver to exit the car exposes the person to "very little more" than is exposed while seated, see Mimms, 434 U.S. at 111, opening the car door and keeping it open exposes the car's interior to a significantly greater intrusion than if the door remained closed.

[5] The State does not contend that it was entitled to conduct a "protective frisk" of defendant's car. "An officer lawfully stopping a vehicle may conduct a protective frisk of the passenger compartment if he has a reasonable suspicion that the individual is dangerous and may gain immediate access to the weapons." State v. Gamble, 218 N.J. 412, 432 (2014). The Court approved such a sweep even after police frisked the defendant and his passenger outside the vehicle and found them unarmed. "[T]he officers' reasonable concerns for their safety and the safety of others did not evaporate when they failed to find a weapon on either defendant or his passenger." Id. at 432-33. "The sweep, however, must be cursory and limited in scope to the location where the danger may be concealed." Id. at 433.

Does it matter that in this case, probable cause to search the vehicle arose not from observations the officers made while standing by the driver's door they kept open, but arose from sniffs by the police canine while standing in the same spot? The court concludes that it does not.

As noted, a canine sniff does not constitute a search because it does not reveal noncontraband items. Dunbar, 229 N.J. at 539. See also United States v. Place, 462, 70607 (1983) (stating that a canine sniff of the outside of luggage is not a search under the Fourth Amendment); Indianapolis v. Edmond, 531 U.S. 32, 40 (2000) (noting that a sniff by a narcotics-detecting canine "is not designed to disclose any information other than the presence or absence of narcotics"); Illinois v. Caballes, 543 U.S. 405, 409 (2005) (stating that use of police canine "that does not expose noncontraband items that would otherwise remain hidden from public view – during a lawful traffic stop, generally does not implicate legitimate privacy interests"). For that reason, the canine sniff is deemed "a unique procedure that is less intrusive than a search." Dunbar, 229 N.J. at 539.

But this view of canine sniffs presumes that the sniffing remains "less intrusive," that non-contraband items remain hidden from view, and the canine sniff does not otherwise involve a violation of the defendant's constitutional rights. In Place, the court considered a canine's sniff of closed luggage in a public place. 462 U.S. at 707. Significantly, the sniff "d[id] not require opening the luggage" or

"expos[ing] noncontraband items that otherwise would remain hidden from public view." Ibid. Similarly, the Court has approved canine sniffs of automobiles that "d[id] not require entry into the car," Edmond, 531 U.S. at 40; that did not otherwise "infringe[] respondent's constitutionally protected interest in privacy," Illinois v. Caballes, 543 U.S. 405, 408 (2005); and that did not "prolong[] the stop [beyond that required to complete the stop's mission], absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Rodriguez v. United States, 575 U.S. 348, 355 (2015); see also Dunbar, 229 N.J. at 540; State v. Nelson, 237 N.J. 540, 553 (2019).

Location matters. "The fact that officers walk a narcotics-detection dog around the exterior of each car . . . does not transform the seizure into a search." Edmond, 531 U.S. at 40. By contrast, the Court, applying common law property principles, held that police violated a defendant's constitutional rights when they conducted a canine sniff of his home's interior from the defendant's constitutionally protected curtilage, his porch. Florida v. Jardines, 569 U.S. 1, 7-8 (2013). The Court rejected the government's argument that no search occurred because of the sui generis nature of canine sniffs. "That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred." Id. at 11.

Applying common law property principles in Jardines and Jones, the Idaho Supreme Court held "that a drug dog's trespass into a car during an exterior sniff converts what would be a non-search under Caballes into a search." Randall, 496 P.3d at 853. The court soundly rejected federal cases that have held that no search occurs when the dog's entry is "instinctive." The Idaho court noted that most of the federal cases were decided before the Supreme Court's decisions in Jones and Jardines. Ibid. "[D]og sniffs have special status within the flexible boundaries of [the] reasonable expectation of privacy test, but the trespassory test of Jones affords dogs sniffs no special treatment." Id. at 854.

The court in State v. Campbell, 5 N.W. 3d 870, 452-53 (Wisc. Ct. App. 2024) reached a similar conclusion. It held that a canine sniff was a search when a police canine twice entered the interior of the defendant's car "as opposed to staying at its exterior." "Law enforcement undoubtedly gained information by physically intruding into one of Campbell's 'effect[s],'" noting that it was indisputable that a vehicle is an "'effect'" as that term is used in the [Fourth] Amendment." Ibid. (quoting Jones, 565 U.S. at 404).

Applying these principles, the canine sniff in this case – notwithstanding that it occurred outside defendant's car -- violated defendant's rights. Although an exterior sniff "generally does not implicate legitimate privacy interests," Caballes, 542 U.S. at 409 (emphasis added), the sniff here did, because police prevented

defendant from closing the driver door, and kept it open, therefore exposing the car's interior to public view and canine sniff. Had police opened the luggage in Place to facilitate the canine sniff in that case, one imagines the case would have been decided differently. Just as police may not stick a foot in the doorway of home, to get a peek at what is inside, see Lewis, police here were not permitted to prevent defendant from closing the door, to give Vita a better whiff of what was inside.

Defendant may not have had a reasonable expectation of privacy in the airborne odors on the exterior of his car. But he had a reasonable expectation of privacy and a property interest in his car's interior. Keeping the door open violated defendant's rights. Like the officers in Jardines, the officers here acquired probable cause "only by physically intruding on [defendant's] property" by keeping the door open. Thus, despite the sui generis nature of canine sniffs, a search occurred when Vita was walked near the open door. The canine's search lacked probable cause and the fruits of that search – the police's subsequent entry into the vehicle and discovery of the firearm – must be suppressed.

III.

For the sake of completeness, the court addresses defendant's alternative argument that the canine sniff prolonged the stop beyond the time reasonably required to complete the traffic mission, and police uncovered insufficient evidence of other crimes to extend the investigatory stop on other grounds.

"[A]n officer may not conduct a canine sniff in a manner that prolongs a traffic stop beyond the time required to complete the stop's mission, unless he possesses reasonable and articulable suspicion to do so." Dunbar, 229 N.J. at 540 (citing Rodriguez, 575 U.S. at 537). The traffic mission may include checking the driver's license, inspecting the vehicle's registration and proof of insurance, and conducting a warrant and criminal record check. Rodriguez, 575 U.S. at 355; Dunbar, 229 N.J. at 533.

There is no doubt that officers in this case "add[ed] time to the stop." Dunbar, 229 N.J. at 540. Although it was a matter of a few minutes, there is no de minimus exception. Rodriguez, 575 U.S. at 356-57. Once Officer DeLeon reviewed defendant's credentials, he could have begun writing the ticket for the tinted-window violation. There were at least three other officers present to attend to defendant and to assure safety on the scene. Instead, the stop was prolonged as Officer DeLeon waited for Det. Balestrieri. The State has failed to demonstrate that even if Officer DeLeon had not waited three minutes to work on the ticket, he would have been unable to complete it before the canine sniff was completed.[6]

[6] Defendant also testified that other police officers had stopped him earlier the same day for a tinted window violation but let him go with a warning. Defense counsel argued that this earlier stop should be considered in assessing the time of the alleged second stop. However, a witness from the Mercer County Prosecutor's Office testified that there was no record of the earlier stop. Furthermore, defendant said nothing about the alleged first stop when police questioned him. The court is not persuaded that an earlier stop occurred.

Even so, defendant's prolonged detention was lawful. "[I]f, as a result of the initial stop or further inquiries, 'the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions." Dunbar, 229 N.J. at 533 (second alteration in original) (quoting State v. Dickey, 153 N.J. 468 (1998)). In Dunbar, the Court held that "if an officer has articulable reasonable suspicion independent from the reason for the traffic stop that a suspect possesses narcotics, the officer may continue the detention to administer a canine sniff." Id. at 540. Likewise, an officer may continue the detention to administer a canine sniff upon forming an articulable reasonable suspicion that a defendant possesses a firearm.

That was the case here. The totality of circumstances supported a reasonable and articulable suspicion that defendant possessed a firearm. See State v. Goldsmith, 251 N.J. 384, 399-400 (2022) (stating that court must engage in a "highly fact-intensive inquiry" that considers "the totality of the circumstances"). Defendant's movements toward his seat and his admitted nervousness are factors supporting reasonable suspicion. Although nervousness and furtive movements do not by themselves suffice to establish reasonable articulable suspicion, id. at 400, "a suspect's nervousness plays a role in determining whether reasonable suspicion exists," State v Stovall, 170 N.J. 346, 367 (2002), and "there are some cases in which 'furtive' movements or gestures by a motorist, accompanied by other circumstances,

will ripen into a reasonable suspicion that the person may be armed and dangerous." State v. Rosario, 229 N.J. 263, 277 (2017) (quoting State v. Lund, 119 N.J. 35, 48 (1990)).

Defendant also had a prior conviction – less than five years earlier -- for unlawfully possessing a handgun. Our Court has recognized that even prior arrests, short of convictions, are a factor in the totality of circumstances. See Nelson, 237 N.J. at 554-55 (considering the defendant's "admission of prior narcotics arrests"); State v. Thomas, 110 N.J. 673, 683 (1988) (considering "prior arrest for drug possession"); cf. State v. Valentine, 134 N.J. 536, 547 (1994) (stating that "an officer's knowledge of a suspect's prior criminal activity in combination with other factors may lead to a reasonable suspicion that the suspect is armed and dangerous").[7]

Yet, the court rejects the State's contention that the alleged "high crime area" where the stop occurred also contributed to reasonable and articulable suspicion of

[7] Arguably, a motorist may opt for excessive window tinting for the express purpose of hiding criminal activity within the vehicle (although one may choose it to block glare or heat from the sun, or simply to provide privacy). Consequently, the presence of extreme tinting conceivably may be an additional factor supporting reasonable and articulable suspicion of criminal activity. Defense counsel conceded that there was a reasonable basis for suspecting a window tinting violation, which involves window tinting so dark that it prevents anyone from clearly seeing the vehicle's occupants or cargo. However, as the State did not argue this was a factor, the court does not consider it as such.

criminal activity. "[B]uzz words" and "conclusory statement[s]" are not enough. Goldsmith, 251 N.J. at 404. The State must provide "factual support" and "some evidence" for the claim that a defendant was stopped in a "high crime area." Id. at 404-05. Officer DeLeon did not describe the geographic area he had in mind, nor did he provide any data on criminal activity in the area, and how it compared to other areas. In short, he provided less detail than that found wanting in Goldsmith. See id. at 404 (rejecting as insufficient officer's recital of arrests he made in the alleged high crime area).

Nonetheless, the remaining factors were sufficient to establish a reasonable and articulable suspicion of a firearms offense, which justified prolonging the stop for a few minutes more, to complete a canine sniff.

IV.

In sum, the court grants the motion to suppress because police facilitated the canine search by preventing defendant from closing the driver's side door.