

SUPREME COURT OF NEW JERSEY
DOCKET NO. 084493
App. Div. Docket No. A-2354-18T2

STATE OF NEW JERSEY, : CRIMINAL ACTION
 :
 Plaintiff-Respondent, : On Petition for Certification
 : from a Final Judgment of the
 v. : Superior Court of New Jersey,
 : Appellate Division.
 CORNELIUS C. COHEN, :
 : Sat Below:
 Defendant-Petitioner. :
 : Hon. Ellen L. Koblitz, J.A.D.
 : Hon. Greta Gooden Brown, J.A.D.

BRIEF AND APPENDIX OF AMICUS CURIAE
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PRELIMINARY STATEMENT

The Appellate Division's opinion in this case grants the police wide discretion during traffic stops to search, without a warrant, every part of a motor vehicle based solely on the general scent of marijuana -- without regard to the place from which the scent originates. That rule violates state and federal search-and-seizure law because the automobile exception permits police to search only those locations where there is probable cause to believe that contraband or evidence of a crime will be found. A wealth of precedent makes clear that the odor of marijuana creates probable cause to search only the area from which it appears to be emanating. It is not a blank check to search an entire car.

Not only does the Appellate Division's decision flout settled precedent, but it also risks further aggravating the well-documented racial bias in marijuana enforcement (prior to its legalization) by broadening the already-substantial discretion police enjoy in conducting warrantless traffic stops. Given the demonstrated racial disparity in marijuana enforcement, this Court should not unnecessarily expand police discretion to search trunks and hoods without the particularized suspicion required by the State and Federal Constitutions.

Instead, this Court should clarify that, in pre-legalization cases, the odor of marijuana provides probable cause to search only those areas from which a reasonable officer would believe the

odor emanates. A strong odor of contraband that appears to emanate from a specific compartment would provide a well-grounded suspicion that the compartment contains contraband and would thus authorize a targeted search of that compartment.

The searches in this case did not meet that basic standard because none of the state trooper's observations during the traffic stop suggested that the odor of marijuana emanated from the trunk or hood. Because the State failed to prove that the odor emanated from the places searched, the searches were unconstitutional, and the seized evidence must be suppressed. For those reasons, as explained more fully below, the Appellate Division's judgment must be reversed and defendant's conviction vacated.

STATEMENT OF INTEREST IN THE CASE

Founded on July 1, 1967, the Office of the Public Defender (OPD) was the first centralized state-wide public defender system in the United States, created following the landmark decision in Gideon v. Wainwright, 372 U.S. 335 (1963). The OPD was created "to provide for the legal representation of any indigent defendant who is formally charged with the commission of an indictable offense," N.J.S.A. 2A:158A-5, and it represents the majority of criminal defendants in our courts. In its criminal-defense function, the OPD not only provides legal counsel at the Superior Court trial level in the state's twenty-one counties, but it also handles appeals, post-conviction relief proceedings, and other significant ancillary legal proceedings.

This case presents an issue of statewide importance relating to the preservation of a suspect's search-and-seizure rights. The Court's opinion in this case will directly impact every OPD client challenging a motor-vehicle search conducted on the basis of marijuana odor prior to the effective date of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), L. 2021, c. 16, and L. 2021, c. 19.

The role of an amicus curiae is to "assist in the resolution of an issue of public importance," R. 1:13-9(a), by "provid[ing] the court with information pertaining to matters of law about which the court may be in doubt," Keenan v. Bd. of Chosen Freeholders,

106 N.J. Super. 312, 316 (App. Div. 1969), or by advising the court "of certain facts or circumstances relating to a matter pending for determination." Casey v. Male, 63 N.J. Super. 255, 258 (Essex Cnty. Ct. 1960). The participation of amicus curiae is particularly appropriate in cases with "broad implications," Taxpayers Ass'n of Weymouth Twp. v. Weymouth Township, 80 N.J. 6, 17 (1976), or of "general public interest." Casey, 63 N.J. Super. at 259.

This case presents an issue of great public importance because it deals with the most basic of police-citizen encounters and the constitutional limitations on police discretion: whether a police officer conducting a routine traffic stop may search without a warrant the entirety of a vehicle based solely on the scent of suspected marijuana. The decision in this case will therefore have an immense impact on the rights of affected criminal defendants and on this Court's search-and-seizure jurisprudence regarding traffic stops more broadly. The OPD, as this state's leading defender of defendants' rights, is particularly well-suited to assist the Court in reaching a just resolution of this important constitutional issue.

LEGAL ARGUMENT

POINT I

THE GENERAL ODOR OF MARIJUANA -- NOT PARTICULARIZED TO THE PLACE TO BE SEARCHED -- DOES NOT PERMIT A POLICE OFFICER TO SEARCH EVERY PART OF A VEHICLE WITHOUT A WARRANT.

A. Search-and-Seizure Precedent Makes Clear that the Odor of Marijuana Provides Probable Cause to Search Only the Area from Which the Odor Appears to Be Emanating.

The State and Federal Constitutions require that probable cause to conduct a search be particularized to the place to be searched. That specificity requirement was an animating concern of the Founders, who sought to guard against invasive, generalized searches. That concern is even more critical in the context of the automobile exception, which permits an individual police officer to determine whether probable cause exists on the scene -- without a warrant authorized by a neutral magistrate. Accordingly, our case law has recognized that the scope of a warrantless automobile search must be strictly tied to the probable cause giving rise to the search. A vast body of precedent thus makes clear that when the odor of marijuana gives rise to probable cause, the search must be limited to the places from which the odor appears to emanate and in which there is a reasonable likelihood that marijuana will be found. Our Constitutions simply do not abide generalized probable cause. Because the Appellate Division concluded otherwise, its judgment must be reversed.

Both the State and Federal Constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7. A warrantless search is presumptively unreasonable unless the State proves by a preponderance of the evidence that the search “falls within one of the few well-delineated exceptions to the warrant requirement.” State v. Elders, 192 N.J. 224, 246 (2007) (citation omitted). One such exception is the automobile exception.

Under State v. Witt, “the automobile exception authorize[s] the warrantless search of an automobile only when [1] the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and [2] the circumstances giving rise to probable cause are unforeseeable and spontaneous.” 223 N.J. 409, 447, 450 (2015) (citing State v. Alston, 88 N.J. 211, 223 (1981)).

“Probable cause” is an objective determination based on the totality of the circumstances and “exists where the facts and circumstances within . . . [the officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” Schneider v. Simonini, 163 N.J. 336, 361 (2000) (alterations in original) (citation omitted). Probable cause is “more than a mere suspicion of guilt, [but] less than the evidence necessary to convict a defendant of a crime in a court of law.” State v. Gibson, 218 N.J.

277, 292 (2014) (alteration in original) (citation omitted).

Crucially, probable cause must be specific to the place to be searched. State v. Boone, 232 N.J. 417, 426 (2017). That specificity requirement was so fundamental to the Founders that they ingrained it in the text of the Constitution. U.S. Const. amend. IV (“[N]o Warrants shall issue, but upon probable cause . . . particularly describing the place to be searched, and the persons or things to be seized.” (emphasis added)); accord N.J. Const. art. I, ¶ 7 (substantially same). Indeed, one of the chief evils that the Fourth Amendment was designed to guard against was the use of “general warrants” and “writs of assistance,” which permitted indiscriminate searches of any place deemed relevant by the searching officer -- effectively placing “the liberty of every man in the hands of every petty officer.” Boyd v. United States, 116 U.S. 616, 624-29 (1886) (citation omitted); Steagald v. United States, 451 U.S. 204, 220 (1981). The Fourth Amendment’s specificity requirement was thus a direct response to the abuses of generalized searches and was intended to constrain individual officers’ discretion by precisely defining the places to be searched and things to be seized. See Stanford v. Texas, 379 U.S. 476, 481-85 (1965).

That specificity requirement applies with equal force to warrantless searches under the automobile exception: “The scope of a warrantless search of an automobile is defined by the object of

the search and the places where there is probable cause to believe that it may be found." State v. Esteves, 93 N.J. 498, 508 (1983) (emphasis added).² This Court's precedents governing the scope of the automobile exception thus make clear that before the police may search a separate, closed section of a vehicle, such as its trunk, they must have probable cause to believe that evidence of a crime will be found in that section.

For example, in State v. Patino, the Court held that the automobile exception did not justify the warrantless search of a vehicle's trunk because the probable cause for the search did not extend beyond the vehicle's interior to the trunk. 83 N.J. 1, 12-15 (1980) (opinion of Clifford, J.). The state trooper who stopped the defendants' car observed a container with green vegetation on the floor of the front seat and ordered the defendants out of the car. Id. at 5. The trooper seized the container, which contained marijuana, and he also seized a nearby marijuana cigarette. Ibid. After discovering the marijuana in the car's interior, the trooper extended the search to the trunk, where he found a bag of cocaine. Id. at 6.

The Patino Court suppressed the cocaine found in the trunk. Id. at 4. Justice Clifford explained that the search of an

² Although Witt altered the exigency requirement for a warrantless automobile search, it did not broaden the scope of such a search or alter the probable cause requirement. See 223 N.J. at 450.

automobile "must be reasonable in scope." Id. at 10. The search of the trunk in Patino was not reasonable because "[n]othing found in the interior of the passenger area or in the conduct of the defendants generated any suspicion of a drug cache in the trunk." Id. at 12 (emphasis added). Thus, probable cause specific to a vehicle's interior "does not alone without other circumstances . . . provide justification to extend the zone of the exigent search further than the persons of the occupants or the interior of the car." Id. at 14-15; accord State v. Patino, 163 N.J. Super. 116, 124 (App. Div. 1978) ("[T]he trunk is a distinctly separate part of the car, in which there is reasonably greater expectation of privacy than in the passenger compartment."), aff'd, 83 N.J. 1. The Patino rule is clear: probable cause must be specific to the "zone" of the vehicle to be searched.

That principle was further upheld in State v. Guerra, in which the Court cited the Patino rule approvingly and applied it to different facts where there was probable cause to search a vehicle's trunk. See 93 N.J. 146, 150-51 (1983). In Guerra, state troopers stopped a car and smelled a strong odor of raw marijuana, but they "concluded" the odor could not have been emanating from a suitcase in the back seat. Id. at 149. The car was also "hanging low in the trunk." Id. at 149-50. The troopers searched the trunk and found 176.5 pounds of marijuana. Ibid.

In a six-page opinion, the Guerra Court upheld the search based on the automobile exception. Id. at 148, 150-51. The Court's analysis of the odor issue consisted of just one paragraph with little analysis;³ however, the Court affirmed the trial and appellate courts' findings that the odor of marijuana established probable cause to search the trunk because the odor "could not have emanated from the small suitcase in the car's interior" and thus had to be emanating from the trunk. Id. at 150. Guerra's sanction of the trunk search based on an odor, which had to be emanating from the trunk, is therefore a straightforward application of the Patino rule that a search of the trunk must be based on suspicion specific to the trunk. See id. at 150-51 ("[The] extent of [a] search of an automobile depends upon the degree of probable cause." (citing Patino, 83 N.J. 1)).

Together, Patino and Guerra demonstrate that the police may extend a warrantless search of an automobile to its trunk or hood compartment only where there is probable cause to believe that evidence of a crime will be found in that compartment. See State v. Young, 87 N.J. 132, 145 (1981) ("Patino requires that the scope

³ The primary issue in Guerra did not involve the automobile exception but instead concerned whether a telephonic warrant, which the police had secured prior to the search, was constitutionally defective. See 93 N.J. at 148, 150. The State petitioned solely on that issue, and the defense evidently did not file a cross-petition from the lower courts' determinations that probable cause existed. See ibid. That unique posture may explain the Guerra Court's cursory analysis of the probable cause issue.

of a search be reasonable and that the State demonstrate probable cause as to all areas searched." (emphasis added)); accord Esteves, 93 N.J. at 508. The scope of the automobile exception is thus simply an application of the well-established general rule that probable cause must be specific to the place to be searched. See Boone, 232 N.J. at 426.

This Court's decisions involving the odor of marijuana during traffic stops demonstrate that probable cause to search exists only for the specific area from which the odor emanates. See, e.g., Guerra, 93 N.J. at 150-51; State v. Pena-Flores, 198 N.J. 6, 12-14, 30 (2009) (holding odor of raw marijuana detected from "the driver side of the [vehicle]" justified search of vehicle's interior), overruled on other grounds by Witt, 223 N.J. at 414-15; State v. Birkenmeier, 185 N.J. 552, 555-57, 562-63 (2006) (upholding search of vehicle's "passenger compartment" based on odor of marijuana and corroboration of informant's tip); State v. Nishina, 175 N.J. 502, 506-09, 517-19 (2003) (upholding search of vehicle's interior based on (1) odor of marijuana emanating from defendant's clothing after he retrieved driving credentials from vehicle, (2) rolling papers found on defendant's person, and (3) plain-view observation of plastic bag protruding from interior).

Lower court decisions similarly illustrate that probable cause derived from the odor of marijuana must be specific to the location to be searched. For example, in State v. Kahlon, the

Appellate Division upheld the search of a vehicle's trunk based on an odor of raw marijuana emanating from the vehicle's rear. 172 N.J. Super. 331, 338 (App. Div. 1980). During the traffic stop, a state trooper smelled burning marijuana, and the driver admitted to smoking marijuana, so the trooper searched the front interior area of the vehicle, where he found a marijuana cigarette and a bag containing one-half ounce of marijuana. Id. at 337. The trooper then searched the back seat area and smelled a heavy odor of raw marijuana. Id. at 336-37. The trooper could not locate the source of the odor, but it "appeared to emanate from the rear of the vehicle," so he extended the search to the trunk, where he found a box containing approximately thirty pounds of marijuana. Id. at 337-38. The Appellate Division found probable cause for the trunk search because the odor "emanate[d] from the rear," which reasonably suggested "that the odor came from the car's trunk." Id. at 338.

Likewise, in State v. Rodriguez, the Appellate Division held that probable cause existed to search a Jeep's "rear cargo area" during a traffic stop after police detected an odor of raw marijuana emanating from the Jeep's rear. 459 N.J. Super. 13, 17, 25 (App. Div. 2019). In that case, the officer testified that "the odor of marijuana became stronger as he moved toward the Jeep's rear cargo area," which was contiguous with the passenger area. Id. at 17. In the rear cargo area, the officer found a box, which

gave off an “overwhelming” odor of marijuana, and in which he found twenty-eight pounds of marijuana. Id. at 17-18. The Appellate Division again upheld the search of the rear cargo area because that was the compartment “from which the smell [of marijuana] appeared to be emanating.” Id. at 25.

And in State v. Judge, the Appellate Division upheld the search of a car’s interior based on the odor of burnt marijuana emanating from it, but the court made clear that the odor from the interior would not have permitted a search of the trunk absent another exception to the warrant requirement. 275 N.J. Super. 194 (App. Div. 1994). In that case, a state trooper smelled burnt marijuana while standing outside the car’s driver’s side window. Id. at 197. The trooper ordered the driver and two passengers out of the car, and a search of the passengers revealed two smoking pipes containing marijuana residue. Id. at 197-98. The trooper then observed in plain view on the interior console a plastic bag containing greenish-brown vegetation and two marijuana cigarettes. Id. at 198. Based on those observations, the trooper searched the car’s back seat and found a bag, which contained suspected marijuana. Ibid. The driver then provided consent to search the trunk, where additional suspected marijuana was found. Ibid.

The Judge panel held that the odor of marijuana emanating from the driver’s side window provided probable cause to search the car’s interior because, based on the odor, “[t]he suspected

marijuana could reasonably have been located in the passenger compartment and/or on the person of the occupants of the vehicle.” Id. at 201, 205-06. Importantly, the court explained that “the scope of a search permitted under the automobile exception was not exceeded” because “[t]he trunk was searched only after defendant consented.” Id. at 205-06 (citing Esteves, 93 N.J. at 508). In other words, the odor of marijuana that justified the search of the interior under the automobile exception would not have justified the search of the trunk, and thus another exception, consent, was required to search the trunk. See ibid.

Finally, in State v. Astalos, the Law Division denied a motion to suppress evidence seized from a driver’s person based on the odor of marijuana but granted the motion as applied to a search of the vehicle’s trunk. 160 N.J. Super. 407, 409-10, 414-16 (Law Div. 1978). When the state trooper asked the driver for his driving credentials, the trooper smelled burning marijuana and ordered the driver out of the vehicle. Id. at 409. The trooper then saw protruding from the driver’s pocket a smoking pipe and plastic bag, which contained a substance wrapped in foil. Ibid. The trooper seized the bag and pipe and discovered suspected hashish. Id. at 409-10. After a search of the car’s interior revealed no additional contraband, the trooper extended the search to the trunk, which contained a shotgun. Id. at 410. Based on the odor of marijuana and plain-view observations, the court upheld the seizure of the

hashish from the driver's person, but it suppressed the gun found in the trunk because there was no "independent justification to believe that contraband or evidence of crime may be found therein." Id. at 412-16.

Other cases involving the odor of marijuana similarly support a targeted search of the area from which the odor emanates. See, e.g., State v. Mandel, 455 N.J. Super. 109, 111-12, 117 (App. Div. 2018) (upholding seizure of marijuana from under vehicle's passenger seat based on odor of marijuana detected while officer leaned his head through passenger window); State v. Pompa, 414 N.J. Super. 219, 224-27, 234, 237 (App. Div. 2010) ("assum[ing]" odor of raw marijuana "coming from the sleeper cabin" of tractor-trailer would provide probable cause to search sleeper cabin); State v. Vanderveer, 285 N.J. Super. 475, 478-81 (App. Div. 1995) (holding odor of marijuana detected within open porch established probable cause to search suspect standing in "immediate area"); accord State v. Myers, 442 N.J. Super. 287, 297 (App. Div. 2015) ("[T]he odor of marijuana gives rise to probable cause to conduct a warrantless search of the persons in the immediate area from where the smell has emanated." (emphasis added) (citations omitted)).

Lastly, non-odor traffic-stop cases, like Patino, demonstrate that the scope of a motor vehicle search must be directly tied to the probable cause that justifies the search. See, e.g., Young, 87

N.J. at 144 (upholding search of suitcase in car's back seat because "[u]nlike Patino and similar cases, the troopers did not unreasonably extend the scope of the search to areas of the car and its contents beyond those in which their observations provided sufficient probable cause to suspect evidence of criminal activity"); State v. Murray, 151 N.J. Super. 300, 303-10 (App Div. 1977) (upholding search of passenger compartment based on plain-view observations of marijuana paraphernalia but suppressing hashish and money found in van's hidden compartment near driver's seat after police removed the seat); State v. Letman, 235 N.J. Super. 337, 348 (App. Div. 1989) (upholding search of car's trunk where police found cocaine in car's interior and occupant admitted he placed a suspicious, unknown bag in the trunk); State v. McCarthy, 130 N.J. Super. 540, 542-43 (App. Div. 1974) (upholding search of car's trunk where informant tip indicated suspect had hidden marijuana in the trunk). No rational reason exists to treat the odor of marijuana differently from any other factor that might direct an officer's suspicion to a specific location.

The above cases all support the rule articulated in Patino and derived from the historical abuses that motivated the Fourth Amendment: probable cause must be specific to the place to be searched. 83 N.J. at 12-15. In particular, pre-legalization case law on the odor of marijuana shows that it provides probable cause to search only those sections of a vehicle from which the odor

appears to emanate. This Court should therefore make explicit the rule derived from the vast body of search-and-seizure precedent cited above -- that a search based on the odor of contraband must be limited to the location from which it appears to emanate.

B. The Risk of Implicit Racial Bias in Marijuana Enforcement Further Counsels Against Broadening the Scope of Warrantless, Discretionary Traffic Searches.

In addition to the overwhelming consensus of the above precedent, the risk of implicit bias in marijuana enforcement provides yet another reason why this Court should disapprove of broad, warrantless car searches based on the non-specific odor of marijuana. As the trial court here correctly noted, the detection of an odor is "subjective" and usually cannot be independently corroborated or challenged at a suppression hearing. (3T 58-17 to 59-20, 64-15 to 18) And as the trial court also observed, permitting extensive warrantless searches based solely on an officer's claim that she detected an odor is particularly troubling where, as here, the police never recovered any marijuana. (3T 58-23 to 59-1, 67-8 to 9)

Policing, like any other human pursuit, may be affected by implicit racial bias, as has been widely recognized by this Court,⁴

⁴ E.g., State v. Maryland, 167 N.J. 471, 484-86 (2001) (finding field inquiry impermissibly based on "racial stereotyping" and prohibiting investigative stops based on such stereotyping); State v. Segars, 172 N.J. 481, 493 (2002) ("racial targeting" by police requires suppression); Witt, 223 N.J. at 442 ("Not long ago, the State Police subjected minority motorists to consent searches on

the New Jersey Attorney General,⁵ countless jurists and scholars,⁶ and empirical data.⁷ Marijuana laws, in particular, have been disproportionately enforced against people of color in this state -- an empirical finding by the Legislature that served as one of the primary motivations for the historic legalization of marijuana.⁸ Importantly, implicit, or unconscious, bias is most

a grossly disproportionate basis because of racial profiling.”); accord State v. Nyema, 249 N.J. 509, 529-30 (2022) (reiterating prohibitions on race-based policing).

⁵ N.J. Att’y Gen., Directive No. 2005-1: Establishing an Official Statewide Policy Defining and Prohibiting the Practice of “Racially-Influenced Policing” (June 28, 2005), <https://www.nj.gov/lps/dcj/agguide/directives/racial-profiling/pdfs/law-enforce-dir-2005-1.pdf> (““Racial Profiling,” is a longstanding criminal justice issue that needs to be addressed by every police agency in every jurisdiction throughout the nation . . .”).

⁶ E.g., Utah v. Strieff, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting); United States v. Martinez-Fuerte, 428 U.S. 543, 571-73 (1976) (Brennan, J., joined by Marshall, J., dissenting); L. Song Richardson, Implicit Bias and Racial Anxiety, 15 Ohio St. J. Crim. L. 73, 74-78 (2017).

⁷ E.g., U.S. Dep’t Just., C.R. Div., Investigation of the Newark Police Department 16, 19-20 (July 22, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf (finding Black residents of Newark were 2.5 times more likely than white residents to be stopped by police between January 2009 and June 2012; and 85% of suspects stopped for being a “suspicious person” were Black); Floyd v. City of New York, 959 F. Supp. 2d 540, 557-63 (S.D.N.Y. 2013) (city-wide stop-and-frisk practice held unconstitutional where Black and Hispanic residents comprised 83% of the 4.4 million stops between January 2004 and June 2012 despite comprising 52% of the 2010 population).

⁸ See New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:6I-32(e), L. 2021, c. 16, § 2 (“Black New Jerseyans are nearly three times more

dangerous when discretion is at its broadest. See Richardson, 15 Ohio St. J. Crim. L. at 84 (citing Jennifer L. Eberhardt et al., Seeing Black: Race, Crime, and Visual Processing, 87 J. Personality & Soc. Psych. 876, 876 (2004)). Thus, warrantless, discretionary traffic stops -- especially those involving marijuana enforcement -- are particularly susceptible to the effects of implicit bias.

A clear rule limiting odor-based searches during such stops to only those areas from which the odor emanates would therefore minimize the pernicious effects of implicit bias by reeling in police discretion to extend vehicle searches into areas for which they lack particularized suspicion. Rather than permitting individual officers in such circumstances to decide based on instinct whether to delve into a driver's trunk or hood compartment -- a decision that could be affected by unconscious bias -- officers should be permitted to do so only when an odor emanating from the compartment provides an objective basis to believe that it contains contraband. In that way, the probable cause standard would ensure objectivity and reduce the risk of bias.

Moreover, this Court has historically not shied away from grappling with the harmful effects of implicit bias when considering other constitutional protections for New Jerseyans, including in the traffic-stop context. See, e.g., State v. Carty,

likely to be arrested for marijuana possession than white New Jerseyans, despite similar usage rates").

170 N.J. 632, 635 (2002) (holding that State Constitution requires reasonable and articulable suspicion before police may seek consent to search a vehicle in part because it “serves the prophylactic purpose of preventing the police from turning routine traffic stops into a fishing expedition for criminal activity”); State v. Domicz, 188 N.J. 285, 304 (2006) (explaining the “Carty decision addressed concerns about the then intractable problem of racial profiling on our highways”); State v. Andujar, 247 N.J. 275, 303, 308-10 (2021) (invoking “the Court’s supervisory power” to establish procedure to avoid racial bias in jury selection, and declaring “[i]t is important for the New Jersey Judiciary to focus with care on issues related to implicit bias”).

As this Court has done in the past, here, it should consider the risk of implicit bias in marijuana enforcement as an additional reason not to further broaden police discretion to extend warrantless searches during common traffic encounters to the entire vehicle based solely on the general scent of marijuana. Instead, this Court should adhere to the longstanding requirement that probable cause be specific to the place to be searched.

C. Here, the State Failed to Carry Its Burden to Prove that the Odor of Marijuana Appeared to Be Emanating from the Hood and Trunk that Were Searched.

In a suppression case, the State maintains the burden to prove by a preponderance of the evidence that a warrantless search was justified by a recognized exception to the warrant requirement.

State v. Nyema, 249 N.J. 509, 527 (2022). Here, the State failed to carry that burden because the evidence did not establish that the odor of marijuana appeared to emanate from the compartments that were searched -- the trunk and the hood. Because the State failed to carry its burden, the searches of both compartments were illegal, and defendant's conviction must be reversed. See U.S. Const. amends. IV, XIV; N.J. Const. art. I, ¶ 7.

The State presented remarkably little testimony about the odor that it claims justified the warrantless searches. State trooper Charles Travis, who initiated the traffic stop and searches, testified that when he approached the vehicle and stood outside it, he saw multiple air fresheners hanging from the rearview mirror; a Black male in the driver's seat (defendant) and a Black female in the passenger's seat; and "greenish-brown vegetation on [defendant's] beard and his shirt, which we indicate as shake." (1T 108-4 to 24)⁹ When the prosecutor asked Travis whether there were "any odors inside this vehicle," Travis said that he detected "[a] strong odor of raw marijuana." (1T 109-11 to 12) He also said on direct-examination that he "got the detection of raw marijuana . . . from the vehicle." (1T 113-8 to 11) On redirect, Travis confirmed that he smelled the odor of marijuana

⁹ This brief adopts the citation designations set forth in footnote one on page two of defendant's petition for certification.

"[s]hortly after going up to the vehicle." (4T 78-14 to 17)¹⁰ And during recross, Travis testified that he wrote in his police report, "I detected the odor of raw marijuana emanating from the interior of the vehicle." (4T 94-1 to 7) According to the trial court's written factual findings, "While awaiting the Defendant's [driving] documents, Trooper Travis allegedly smelled the odor of raw marijuana." (OPDa 56) The trial court later stated in its opinion that the odor was "emanating from the vehicle." (OPDa 61) Before searching the vehicle, Travis also found in defendant's pocket a key chain depicting a marijuana leaf and words to the effect of "I got high at South Beach." (1T 115-12 to 117-13)

Based on those observations, Travis began to search the vehicle "[b]ecause [he] detected the odor of raw marijuana." (1T 118-9 to 120-3) Travis first searched the car's interior and found no marijuana; he then extended the search to the hood and trunk compartments. (OPDa 56) Travis testified that the reason he searched the hood compartment was because "[m]arijuana can fit in the engine compartment. And what will happen is it will get sucked

¹⁰ The transcript of Trooper Charles Travis's cross-, redirect-, and recross-examinations, dated March 1, 2018, appears to have been omitted from the record before the Appellate Division. The undersigned counsel has obtained a copy of that transcript (appended at Da 1-53), and it does not add anything new besides further demonstrating what was already brought out on Travis's direct-examination -- that the odor emanated from the car's interior, not the trunk or hood. This brief refers to that transcript as "4T."

into . . . the air vents.” (1T 122-22 to 123-1) Travis began to say that he had “seen previous, you know, stops that [he] had --” but he was cut off by an objection by defense counsel. (1T 123-1 to 4) Although the court overruled the objection, Travis did not complete his response, and the State did not solicit further testimony about any specific experience Travis had regarding air vents. (1T 123-3 to 125-1) Travis said he extended his search to the trunk because he was “still searching for marijuana.” (1T 129-2 to 8)

The search of the hood compartment revealed a shotgun and a revolver. (1T 125-16 to 128-14) The search of the trunk revealed ammunition, including hollow point bullets. (1T 130-1 to 9) No raw marijuana was found anywhere in the vehicle except the “shake” on defendant’s person, which Travis had observed before the search.

Trooper Travis’s observations did not justify his searches of the vehicle’s hood or trunk compartments. In particular, nothing observed by Travis suggested that the odor of marijuana was emanating from anywhere except the vehicle’s interior. His direct testimony indicated only that an odor appeared to be coming from “inside this vehicle” or “from the vehicle.” (1T 109-11 to 12, 113-8 to 11; OPDa 61) And he confirmed on recross that the odor was “emanating from the interior of the vehicle.” (4T 94-1 to 7) Thus, the facts clearly establish that the odor of marijuana emanated from the interior passenger compartment. Indeed, the

Appellate Division reached the same conclusion. (Dpa 19, 22)

As demonstrated by the abundant precedent cited in Point I.A, the odor of marijuana emanating from the interior passenger compartment would have provided probable cause under the automobile exception for the police to search the passenger compartment and the driver's person. That is so because such an odor coming from the interior reasonably suggests that marijuana will be found in that location.

However, what is not permissible solely after detecting an odor emanating from the interior, and what happened here, is a search of the hood and trunk compartments from which the odor is not emanating. See, e.g., Patino, 83 N.J. at 12-15; Judge, 275 N.J. Super. at 205-06; Astalos, 160 N.J. Super. at 412-16. Rather, to justify a search of the trunk or hood, the State had to prove that a reasonable officer would have believed that the odor appeared to be emanating from the trunk or hood, thus indicating a reasonable likelihood that marijuana would be found there.

Here, Trooper Travis provided no justification whatsoever for searching the trunk of the Honda Civic, which was a separate, enclosed compartment. Travis never suggested that the odor appeared to be emanating from the trunk or even from the rear of the car; nor did he provide any testimony indicating that the odor had somehow traveled from the closed trunk into the interior. Thus, nothing Travis observed created a well-grounded reason for him to

believe that contraband would be found in the trunk, and therefore the ammunition found there should have been suppressed.

Similarly, although Travis's testimony regarding the air vents provided a slightly less generalized basis for the search of the hood, that testimony nonetheless fails to justify that search. Travis's unremarkable observation that odors can travel through vents, and that therefore an odor detected from the inside of a car could have traveled through a vent from an adjoining compartment, was not specific enough to this particular search to reasonably believe that the odor emanated from the hood or that marijuana would likely be found there. Rather, Travis's observation merely suggested that it was possible that the odor could have traveled through a vent -- not that it had done so in this case or even that it was likely. Thus, Travis had no reason to believe that this hood compartment contained contraband, and therefore the weapons found there should have also been suppressed.

Moreover, Travis's observation of the raw shake on defendant's person suggests that the odor of raw marijuana could have simply emanated from the shake. Travis never testified that he excluded the shake as the source of the odor -- let alone explained how it could have been excluded. Indeed, that Travis never found any other marijuana in the vehicle suggests that the shake very well could have been the true source.

Unlike what occurred here, cases upholding trunk searches

demonstrate the type of observations that Travis could have made that would have reasonably directed his suspicion, and thus probable cause, to the trunk or hood compartments. For example, Travis could have approached the trunk or hood and observed whether the odor of marijuana grew stronger as he did so, which would have indicated that the odor appeared to be emanating from those compartments. And if Travis suspected that the odor had wafted from the hood to the interior through a vent, he could have smelled near the vent to determine whether the scent grew stronger, which would have provided an objective basis specific to this search to conclude that the odor was likely emanating from the hood. However, Travis did none of those things. He thus made no objective observations that would have led a reasonable officer to believe that the odor appeared to be emanating from the places searched.

In line with the above examples of what would have been sufficient, State v. Rodriguez provides a clear illustration of the type of circumstances involving the odor of marijuana during a traffic stop that would establish probable cause to believe that a hood or trunk compartment contained marijuana. See 459 N.J. Super. 13. In that case, the Appellate Division upheld the search of a Jeep's rear cargo area after a police officer detected the odor of marijuana emanating from that compartment. Id. at 13, 17-18, 25. Importantly, the officer specifically observed that "the odor of marijuana became stronger as he moved toward the Jeep's

rear cargo area” and that, in that area, he found a box that was “emanating an ‘overwhelming’ odor of raw marijuana.” Id. at 17.

The search of the rear cargo area in Rodriguez was valid under the automobile exception not merely because the officer asserted that he smelled a general odor of marijuana and did not find it in the interior, nor because the smell could have possibly wafted through a vent. Instead, the search was proper because the officer made specific observations about the source of the odor from which a reasonable officer could have concluded that the odor emanated from the rear and therefore that the rear likely contained marijuana. As Rodriguez shows, neither technical nor elaborate testimony is required to establish probable cause from an odor; rather, what is required is reasonable specificity. Rodriguez is thus in line with Patino and other non-odor cases by requiring probable cause specific to the place to be searched. See Patino, 83 N.J. at 12-15.

Here, however, no objective observations about the source of the odor reasonably linked any suspicion to the trunk or hood. Thus, to uphold the searches in this case, the Court would have to either sanction generalized probable cause not specific to the places to be searched, or accept Travis’s speculative testimony that the mere presence of a vent in a car automatically transfers the probable cause linked to one location to an adjoining location simply because it is possible for odors to move through vents. The

first proposition, regarding generalized probable cause, has been thoroughly rejected by the precedent cited in Point I.A because probable cause requires reasonable specificity. And the second, regarding the vent theory, must similarly be rejected because vents are common to every vehicle, and thus the vent theory would permit the search of every hood compartment based solely on an odor emanating from the interior -- without any specific basis to believe that the odor had actually wafted from the hood. Indeed, approving the vent theory for motor-vehicle searches would logically lead to the same theory justifying searches of, for example, buildings that happen to share vents. Neither the generalized-probable-cause theory nor the vent theory is consistent with precedent, and both would greatly expand the discretion that police already enjoy in conducting warrantless traffic stops, potentially exacerbating the existing racial disparities in pre-legalization marijuana enforcement.

Finally, this Court should reject a process-of-elimination rule, which would authorize a search of the trunk or hood merely because an officer says she could not locate the source of an odor after searching the interior. Such a rule would effectively amount to a generalized search by permitting an individual officer, at the smell of an odor, to search every part of a vehicle to her satisfaction until she finds something incriminating. Not only is such a rule strikingly reminiscent of the detested "general

warrants" of the Founders' era, but, more fundamentally, the odor of marijuana emanating from one place simply fails to establish a well-grounded suspicion that marijuana will be found in another place. That is so because odors linger even after their source has been moved. Thus, when an officer smells raw marijuana emanating from a vehicle's interior but fails to find it there, the absence of marijuana does not reasonably suggest that it will be found in the trunk or hood. Rather, any number of other scenarios could explain the missing marijuana: it could have been thrown out of the window; it could have been ingested; it could be hidden behind the dashboard, or the police could have otherwise missed it in the interior; or it could have been removed from the vehicle prior to driving. The unique suspicion derived from the odor of marijuana emanating from a particular place is that the odor is reasonably suggestive that marijuana will be found in that place. The same well-grounded suspicion is simply not present when the odor emanates from one place but the police search another.


In sum, the State failed to carry its burden to demonstrate that the odor of marijuana appeared to emanate from the places searched. Because neither the odor from the interior, nor any other circumstances, amounted to probable cause to search the trunk or hood, those searches were not justified under the automobile exception, and the Appellate Division's judgment must be reversed.

CONCLUSION

For the reasons stated above, this Court should hold that the odor of marijuana provides probable cause under the automobile exception to search only the place from which it appears to emanate. Accordingly, the Appellate Division's judgment must be reversed and defendant's conviction vacated.

Respectfully submitted,

JOSEPH E. KRAKORA
Public Defender
Attorney for Amicus
Office of the Public Defender

BY: 
AUSTIN J. HOWARD
Assistant Deputy Public Defender
Attorney No. 390232021

Dated: August 3, 2022

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MIDDLESEX COUNTY
INDICTMENT NO. 16-10-0162
APP. DIV. NO. _____

STATE OF NEW JERSEY, :
 :
 v. : TRANSCRIPT
 :
 CORNELIUS C. COHEN, : OF
 :
 Defendant. : MOTION TO SUPPRESS HEARING
 :
 _____ :

Place: Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903-0964

Date: March 1, 2018

BEFORE:

HONORABLE BENJAMIN S. BUCCA, JR., J.S.C.

TRANSCRIPT ORDERED BY:

AUSTIN J. HOWARD, ESQ., Assistant Deputy Public
Defender, (Office of the Public Defender,
Appellate Section)

APPEARANCES:

SARAH M. MIELKE, ESQ., Deputy Attorney General
(Office of the Attorney General)
Attorney for the State of New Jersey

RAYMOND L. HAMLIN, ESQ., (Hunt, Hamlin & Ridley)
Attorney for the Defendant Cornelius C. Cohen

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Operator - S.R. Porter

1 (Proceeding commenced at 10:25 a.m.)
2 THE COURT: Thanks everyone. Please be
3 seated. Good morning. Good morning.
4 UNIDENTIFIED SPEAKER: Morning, sir. How's
5 it going?
6 THE COURT: Good.
7 (Extended pause)
8 THE COURT: Okay. We are -- this is the
9 matter of State versus Cornelius Cohen, Indictment
10 16-10-162. Appearances, please.
11 MS. MIELKE: Good morning, Your Honor.
12 Deputy Attorney General Sarah Mielke for the State.
13 MR. HAMLIN: Morning, Your Honor. Raymond
14 Hamlin from the firm of Hunt, Hamlin, Ridley; on behalf
15 of Cornelius Cohen, who is present in court.
16 THE COURT: Very good. We also have Trooper
17 Travis; correct?
18 TROOPER TRAVIS: Yes, sir.
19 THE COURT: Trooper Travis is here on the
20 witness stand, and Trooper, let's -- before we begin,
21 just a very brief summary, because we were last before
22 the Court on December 20th, and then for various
23 reasons beyond the control of anyone, the matter had --
24 has been adjourned a couple times. And now we're here
25 for the continuation of that. And at the first

1 hearing, we had Detective Czech who testified. And
2 then thereafter, Trooper Travis testified, as well as
3 we played the video.
4 MS. MIELKE: That's correct.
5 THE COURT: And I believe that we were at the
6 point where we were going to have cross-examination.
7 Is that correct?
8 MS. MIELKE: That is correct.
9 MR. HAMLIN: Yes, Your Honor.
10 THE COURT: Is there anything that -- is
11 there any -- there's -- since there's been such a long
12 period of time, is there anything that you have on your
13 direct that you would like to add?
14 MS. MIELKE: There -- there's nothing further
15 from the State.
16 THE COURT: Very good. Then we'll proceed
17 right to cross-examination.
18 MR. HAMLIN: That's fine. Thank you, Your
19 Honor.
20 C H A R L E S T R A V I S, WITNESS FOR THE STATE,
21 PREVIOUSLY SWORN
22 CROSS-EXAMINATION BY MR. HAMLIN:
23 Q Trooper Travis, I'm -- I'm going to try to
24 take you back through the testimony from the last time.
25 It's -- it's been some time since we were here, but I

1 want to sort of ask you some initial questions.
2 You -- you indicated -- how long have you
3 been with the State Police?
4 A Almost ten years, sir.
5 Q And so, that would be as of the date of the
6 incident, about eight years?
7 A Yes.
8 Q Okay. And would it be fair to say as part of
9 your duties and responsibilities, you prepare incident
10 or police reports?
11 A Correct, sir.
12 Q All right. And would it also be fair to say
13 that part of your duties and responsibilities as an
14 officer would be to pay attention to detail?
15 A Correct.
16 Q Okay. I want to --
17 MR. HAMLIN: Your Honor, may I have this
18 marked?
19 THE COURT: Sure. Just --
20 MR. HAMLIN: I don't even know what the --
21 the -- the D number would be at this point.
22 THE CLERK: D-5.
23 MR. HAMLIN: D-5.
24 THE COURT: D-5. What is D-5, Mr. Hamlin?
25 MR. HAMLIN: Police report.

6

1 THE COURT: Police report.
2 MR. HAMLIN: May I approach, Your Honor?
3 THE COURT: Sure. And you don't have to ask
4 for permission; just go about your business.
5 MR. HAMLIN: It's just --
6 THE COURT: I appreciate the courtesy.
7 Appreciate it very, very much.
8 (Exhibit D-5 marked for identification)
9 BY MR. HAMLIN:
10 Q Showing you what's been marked D-5 for
11 identification. Can you tell me if you are familiar
12 with that?
13 A Yes. This is New Jersey State Police supplemental
14 investigation report.
15 Q Okay. You testified that your responsibility
16 as a State Trooper, at least on the date in question,
17 is the New Jersey Turnpike; correct?
18 A Correct.
19 Q And do you recall what your shift was on that
20 date?
21 A I believe it was 7 at night to 7 in the morning.
22 Q Okay. And part of your duties and
23 responsibilities as an officer on the Turnpike is to
24 observe traffic, to address issues that -- that may
25 occur, make motor vehicle stops; correct?

1 A Correct.
2 Q All right. Would it be fair to say that at
3 some point you made an observation of a black Honda
4 Civic?
5 A Correct, sir.
6 Q Can you tell me in your report where you were
7 when you initially made the observation of the black
8 Honda Civic?
9 A Where my specific location was?
10 Q Yes.
11 A Is that what you're saying? I was on the New
12 Jersey Turnpike northbound on the inner-roadway, sir,
13 or what we refer to it as the SNI roadway.
14 Q All right. There are -- there are mile
15 markers; correct? On the Turnpike.
16 A Correct.
17 Q Yes? Yes?
18 A Correct.
19 Q Okay. And as you sit here today, can you
20 tell me what mile marker you were at when you made the
21 initial observation of the black Honda Civic?
22 A I was approximately milepost 90, sir.
23 Q Okay. And where in relation to the Garden
24 State Parkway is milepost 90 would you say?
25 A Well, it's -- it's right there. So, the exit or

8

1 what we call interchange is, interchange 11 is the
2 interchange for the Garden State Parkway north and
3 south, also other various routes.
4 Q Okay. The last time you were here, you
5 testified on direct examination that you had received
6 an email during roll call regarding an investigation;
7 correct?
8 A Correct. Well, it was a -- almost an email
9 saying, you know, be on the lookout. They had
10 information on a vehicle.
11 Q Well, it wasn't just, "Be on the lookout"; it
12 was information regarding a particular vehicle,
13 actually, two particular vehicles, and a description of
14 why it was that you were to be on the lookout --
15 A Correct.
16 Q -- for this vehicle; correct?
17 A Correct, sir.
18 Q All right. So, I think you testified when
19 you arrived at work on that particular date that you
20 had received this information during roll-call. That'd
21 be fair to say?
22 A Correct, sir.
23 Q All right. So, you knew during roll-call
24 that members of your police department were involved in
25 an investigation seeking to determine if one of two

1 vehicles traveling on the New Jersey Turnpike allegedly
2 may have weapons in the vehicles; correct?
3 A Correct.
4 Q Okay. And, in fact, you testified at the
5 last hearing that that is something that you certainly
6 would be concerned about, because according to your
7 testimony, if the person, or persons, or the vehicle
8 had weapons in it, for your safety, you wouldn't want
9 to be ambushed. Remember testifying to that?
10 A Correct.
11 Q All right. You also testified that through
12 your experience, that there have been, I think you used
13 the word "terrorists" that have been traveling up and
14 down the Turnpike heading to New York; correct?
15 A Various locations. I don't know if I specifically
16 said New York, but yes, there -- there --
17 Q Okay.
18 A -- there has been in the past, yes.
19 MR. HAMLIN: I'd like to have this marked as
20 well.
21 THE CLERK: It will be D-6.
22 MR. HAMLIN: Yes.
23 (Exhibit D-6 marked for identification)
24 MR. HAMLIN: Okay. Thank you.
25 (Extended pause)

1 BY MR. HAMLIN:
2 Q I'm going to show you what's been marked D-6
3 for identification. It's -- it's a transcript of the
4 last proceeding.
5 MR. HAMLIN: Your Honor, do -- would you
6 like, Your Honor need a copy?
7 THE COURT: That'd be great; thank you.
8 That's okay? You have an extra copy?
9 MR. HAMLIN: Yes.
10 THE COURT: Okay. Thank you very much.
11 MR. HAMLIN: If I could just have one moment,
12 Your Honor?
13 THE COURT: Sure.
14 (Extended pause)
15 BY MR. HAMLIN:
16 Q Okay. I'd like to turn to page 87. You have
17 it, page 87?
18 A Yes, sir.
19 Q All right. So, part of your response was on
20 line 19. You indicated that, "Being on the Turnpike,
21 it's a high corridor for terrorists going up to New
22 York, you know, wanted felons." You see that?
23 A Mm hmm.
24 Q That's a yes?
25 A Yes, sir.

1 Q The only reason I say that is because the
2 transcript, it's difficult to hear --
3 A No, I realize. I was -- I'm sorry; I was reading
4 it while you -- while you said it. Sorry about that.
5 Q No problem. So, you get this -- this email.
6 According to your testimony, you're concerned about the
7 potential that the vehicle could have weapons in the
8 vehicle, and because of reports with -- with terrorists
9 sort of going up and down the Turnpike, there was sort
10 of a heightened level of concern. Would that be fair
11 to say?
12 A Heightened level of -- of -- repeat that again.
13 The end part.
14 Q Yeah. Because of the fact that you had
15 information that one of these vehicles that was
16 referred to in the email may have weapons in the
17 vehicle, and you testified that you were concerned
18 about your safety, you would always be concerned about
19 your safety, --
20 A Correct.
21 Q -- and now with terrorists driving up and
22 down the Turnpike, you certainly would have a
23 heightened level of concern; right?
24 A Of awareness, yes. Not --
25 Q Okay.

1 A Concern is -- is -- you know, you really don't --
2 your training kind of kicks in, you know, --
3 Q All right.
4 A -- instincts and everything like that. So,
5 awareness.
6 Q So, where were you coming from prior to
7 making the observation of the black Honda?
8 A I don't know specifically. You patrol, you know,
9 up and down. You drive up and down. You take various
10 exits, U-turns, stuff like that. I know I was coming
11 from the south, going northbound.
12 Q All right. And you weren't on the side of
13 the road stationary and then saw the vehicle; correct?
14 A No. I mean, I might have pulled over, because you
15 -- you witness a lot of vehicles passing you, yes.
16 Q So, is it your testimony that you were on the
17 side of the road, or you weren't on the side of the
18 road?
19 A When I observed the vehicle, I don't recall. I
20 might have looped the interchange, or I might have --
21 was looping the interchange or about the loop the
22 interchange. That's what we call it, looping the
23 interchange.
24 Q Okay.
25 A Prior, I was -- I -- like prior, earlier, we -- we

1 sit on the side of the road all the time. I -- I --
2 anybody travel the Turnpike, you see it, you know, as
3 you're on the side of the road you see a trooper.
4 We're -- we're observing cars all the time.
5 Q Okay. So, you don't recall if the vehicle,
6 the black Honda passed you first?
7 A It might have passed me, yeah. And that's when --
8 that's when I observed it, yeah.
9 Q Is that what happened, or are you saying that
10 might have happened?
11 A Well, the -- yeah, that's -- the vehicle passed
12 me. Of course. And that's -- that's when I saw the
13 vehicle.
14 Q Okay. Can you tell me in your report where
15 you indicated that the vehicle passed you first and
16 that's where you made the observation or --
17 A Oh, no, I didn't -- I didn't put that in my --
18 Q -- how you made the observation?
19 A -- report, sir.
20 Q Okay. So, it's your testimony as you were
21 traveling northbound or stationary, you're not sure,
22 the vehicle, black Honda, passed you; right?
23 A Correct. At one point, yes.
24 Q And then after the vehicle passed you, you
25 began to follow the vehicle; correct?

1 A Yeah. I observed the vehicle and -- and started
2 to follow it. Yes, sir.
3 Q All right. Now, because you had the -- the
4 -- the email that made reference to the vehicle and --
5 and let me just give you a copy.
6 MR. HAMLIN: I think this was already marked;
7 right? Okay.
8 BY MR. HAMLIN:
9 Q S-2 is a copy of the email that you testified
10 to that you had received; right?
11 A Yes, sir.
12 Q All right. And --
13 THE COURT: Could -- could I just -- I'm
14 sorry to interrupt you, but I just kind of want to -- I
15 hate sometimes when I got bogged down in little details
16 and I get distracted from listening, but did you
17 actually receive the email, or was the email read to
18 you during roll-call?
19 THE WITNESS: Well, I didn't check my email
20 prior. It was read to me at roll-call. Well, it was
21 given out, disseminated.
22 THE COURT: So, that's when you learned of
23 it?
24 THE WITNESS: Yes.
25 THE COURT: Was it actually, though -- did

1 you subsequently learn it was actually sent to you, to
2 your personal email -- not to your --
3 THE WITNESS: Yeah, work email.
4 THE COURT: Your work email. Your personal
5 work email.
6 THE WITNESS: Yeah.
7 THE COURT: Okay. Very good.
8 BY MR. HAMLIN:
9 Q But you had a copy of the email; right?
10 A I had a -- yeah. Your -- your sergeant
11 disseminates them.
12 Q Right. That -- that's --
13 A Or my sergeant. I'm sorry. Yeah, my sergeant
14 disseminates them throughout, you know, --
15 Q All right. So, this isn't a -- this wasn't a
16 circumstance where -- I recognize perhaps you didn't
17 open your email for that day. I recognize that. This
18 isn't a circumstance where someone called you on the
19 radio and said, "Be on the lookout for a potential
20 black car or a" --
21 A Correct.
22 Q -- "-- car." This was, "We are at the
23 beginning of the shift, and this email was prepared.
24 We're letting everyone know so you have the email that
25 identifies what this email is about." Right?

1 A Mm hmm. Yes, sir. Sorry. Yes, sir.
2 Q And so, you knew that on the date that you
3 went out for this -- on your shift on that date, that
4 there were two vehicles that members of your department
5 were tracking; right?
6 A I don't know if they were actually -- tracking is
7 a different word. Tracking is, they have various means
8 of investigation. I know that they -- it was an
9 ongoing investigation that they had. I don't know if
10 they were tracking them, sir.
11 Q All right.
12 A I wasn't privy to that. I'm -- like I said, --
13 Q That -- that -- that -- that -- that's fair.
14 But -- but at a minimum, you knew that there was a
15 request for all units to be on the lookout for one of
16 two vehicles; right? One was an Infinity, and one was
17 a black Honda.
18 A Correct.
19 Q All right. And you knew, because the email
20 indicated that it was the belief of the investigators
21 that one or two of the vehicles, one of them, would be
22 returning to New Jersey with a cache of weapons; right?
23 You knew that.
24 A Yeah, possibly returning.
25 Q All right. So, this isn't a circumstance

1 where you're sitting on the side of the road, you make
2 an observation of a vehicle involved in a motor vehicle
3 violation, and then you begin to follow; right?
4 A Say that again.
5 Q This isn't a circumstance where you're on the
6 side of the road, you make an observation of a motor
7 vehicle violation, and then you begin to follow it;
8 correct?
9 A Well, I mean, the -- the -- just -- can you --
10 Q Sure.
11 A -- regroup the question, because the way -- it
12 just -- like it's an open-ended question.
13 Q Right. This circumstance where you ended up
14 following the black Honda --
15 A Mm hmm.
16 Q -- was not that you were on the side of the
17 road, made an observation of a motor vehicle violation,
18 you then followed the vehicle, and then realized that
19 that was a black Honda; right?
20 A Right.
21 Q This was a circumstance where you already
22 knew to be on the lookout for this black Honda or the
23 Infinity; right?
24 A Correct.
25 Q All right. And that is why, initially, you,

1 I guess, pulled out, said you saw the vehicle, and
2 followed the vehicle; right?
3 A Correct.
4 Q All right. Because had you not had this be
5 on the lookout, this information about the black Honda,
6 there would have been no reason to follow it; correct?
7 A At first no. It's not, you know, --
8 Q All right. That -- that's -- that's all I
9 want to know.
10 A Okay. All right.
11 Q That there was no reason, because as I said,
12 it wasn't a circumstance where you're on the side of
13 the road, which happens, I assume where you see a
14 car --
15 A Right.
16 Q -- speeding, you're out after it.
17 A Of course. Or there's another violation you
18 observe, and you're out after it.
19 Q Absolutely. This is, "Oh, that's the black
20 Honda, that's the email. Let me follow it." Right?
21 A Possibly the black Honda. Yeah, I wasn't sure at
22 first.
23 Q All right. All right. So, once you pulled
24 out and you began to follow the -- the black Honda,
25 where was Trooper Brennan?

1 A I don't know if I recall exactly where she was. I
2 know she was in proximity of me, because we were just
3 talking before.

4 Q Where --

5 A Just like we do every day. I mean, people -- you
6 know, we meet up all the time and we talk, and she
7 might have been going back to double up or go back for
8 dinner; I don't know. Or -- or at that time was about
9 to.

10 Q All right. So, was she on the side of the
11 road parked with you as well?

12 A At the time I saw the vehicle? I don't recall,
13 sir.

14 Q All right. And there's nothing in your
15 report that indicates that; correct?

16 A That she was on the side of the road next to me
17 or --

18 Q Right.

19 A No.

20 Q Right, because you don't even indicate in
21 your report that you were on the side of the road;
22 right?

23 A Well, I don't know if -- you know, that -- I mean,
24 that's -- I mean, I, you know, I -- do you put in a
25 report that, you know, you -- you -- you had a cup of

1 coffee in your hand, too? I don't -- you know, I don't
2 do that with my reports.

3 Q No, no. I -- I'm just trying to find out
4 what you wrote in your report, which was no information
5 as to where you were before you made the observation of
6 the vehicle.

7 A Right. I don't usually put that in my report.

8 Q All right. So, you don't recall where
9 Trooper Brennan was; right?

10 A Yeah, I know she was in the area before I was. I
11 mean, I -- you know --

12 Q How was it that you contacted Trooper Brennan
13 to advise of what your observations were?

14 A My observations?

15 Q Yeah. You saw the black Honda. You pulled
16 out. You followed it. How was it that you advised
17 that to Trooper Brennan?

18 A That might have been via the -- the radio. I
19 don't know, sir.

20 Q Do you recall contacting Trooper Brennan to
21 advise her that you were in pursuit -- strike that.
22 Not pursuit. That you were following, and you had
23 identified the black Honda?

24 A I don't know if I did or not. I mean, it's two
25 years ago.

1 Q All right. If you needed to contact a
2 particular officer, how would you do it?
3 A If it's a job matter?
4 Q Yes.
5 A It's like, "Hey, I'm -- I -- I need a backup
6 trooper"?
7 Q Yes. How do you do that?
8 A Via the radio.
9 Q And that would be through dispatch?
10 A I have a radio -- we can hear each other over the
11 radio.
12 Q Through dispatch? Or no?
13 A Well, I can call my dispatcher via the radio,
14 yeah. So, I can just say, "Hey, I'm -- you know, any
15 troopers in the area or anything like that?"
16 Q All right. But you do that -- just -- just
17 -- I'm -- I don't know the process.
18 A Yeah. I'm just trying to figure out -- I don't
19 know where you're -- you're trying to --
20 Q I'm -- I'm going to ask.
21 A -- get me to answer.
22 Q is there a circumstance where you use the
23 radio and you say, "I need backup", and any person that
24 has a radio would hear that?
25 A State Police, yes.

1 Q All right. So, it's not a circumstance where
2 you can dial up using your radio a specific officer to
3 ask for backup; right?
4 A No, you just call their badge number if you need a
5 specific trooper.
6 Q All right. And all of that is routed through
7 the dispatch; right?
8 A Yes.
9 Q Okay. I want to show you D-4 for
10 identification. I want you to take a look at D-4. And
11 if you can tell me in D-4 where it is that you
12 requested Trooper Brennan or another trooper as backup.
13 A Well, this is just a cad abstract, sir. This
14 isn't like a radio transmission via -- you know what
15 I'm saying? This is like, you know, like our
16 dispatchers will put in stuff, like, you know, I don't
17 know what they put in or anything like that when
18 they're putting stuff in. Or I'll -- this is like
19 stuff that we type into our computer.
20 Q So, your testimony is that you would have
21 made a call over the radio for backup or --
22 A If -- if needed. I mean, I -- I show up to stops
23 all the time, if -- if that's what you're asking.
24 Q Well, in this case you've already testified
25 that you made the request; right?

1 A No. No, no. I'm -- I didn't -- I didn't -- if I
2 did, I apologize. I didn't mean to say I, "Oh, hey, I
3 need help." It's -- no. It's nothing like that.
4 Q So, maybe I'm mistaken. I thought you
5 testified that you requested Trooper Brennan to assist.
6 A I -- like I said, I don't know if I did or didn't.
7 I don't know if I radioed up and said, "Hey, you know,
8 if somebody can start heading my way", I don't -- I
9 don't know if I did that, sir.
10 Q Can you check your report to see if you
11 indicated that you radioed Trooper Brennan to assist
12 you?
13 A No, I didn't put that in my report, sir.
14 Q All right. And there's no indication on the
15 cad report of you making any request for assistance
16 prior to the motor vehicle stop; correct?
17 A No. There's no indication, sir.
18 Q All right. So, just so I'm clear, Trooper
19 Brennan, according to your testimony, wasn't with you
20 when you made the observation of the black Honda;
21 right?
22 A Yeah, I don't know if she was -- she was obviously
23 in -- in the -- in the vicinity of where I was, sir.
24 Q Oh. Yeah, because I'm trying to figure out,
25 and maybe you can help me, how did she get there if you

1 -- if you guys didn't communicate, and it was nothing
2 on the dispatch?
3 A How she got to my stop? Because you call your
4 stop out, and she knew the (sic) location was. So, she
5 was relatively close to my location, she would have
6 showed up.
7 Q She was there the same time you were there;
8 right?
9 A I don't know if she 22ed, which means on-scene,
10 the same. She might have been there a short time
11 after. I -- I'm concentrating on the stop. My -- my
12 particular -- I don't know what she's doing at the
13 time.
14 Q All right. Because on the video, when you
15 arrive at the location, she's there with you.
16 A Short time after, yeah.
17 Q Well, she's there with you as you get out of
18 the car; right? Because you --
19 A Oh, I --
20 Q -- you -- you approach one side of the car,
21 and she approaches the other.
22 A No. I approached the driver's side. Or, I'm
23 sorry; I approached the passenger side at first.
24 Q Okay.
25 A Which is --

1 Q And -- and -- and she's not there with you
2 when you approach?
3 A She might have showed up shortly thereafter, I
4 mean, which happens all the time.
5 Q Well, that's what I'm trying to find out.
6 A Yeah.
7 Q Because there's no information in your report
8 about you reaching out to her.
9 A Reaching out, right.
10 Q There's no information --
11 A Right.
12 Q -- on the cad report about you dispatching a
13 need for her. So, I'm trying to find out how was it
14 that she just happened to be there?
15 A I don't know. We're -- we're on patrol all the --
16 you know, all the time.
17 Q Well, you testified at the last proceeding
18 that the Garden State Parkway is not your normal route;
19 correct?
20 A No, I mean, it's not my particular assigned area.
21 I can go anywhere in the State that I want to, sir.
22 Q Right, but you weren't assigned on the
23 Parkway on that day.
24 A No, I make --
25 Q You were assigned on the Turnpike.

1 A -- I make car stops on the Parkway all the time,
2 though.
3 Q Well, my question is, according to your
4 testimony, --
5 A Right, sir.
6 Q -- you weren't assigned to the Parkway on
7 that day; you were assigned to the Turnpike.
8 A Correct.
9 Q And if your testimony is that Trooper Brennan
10 was on the Turnpike with you communicating on the side
11 of the road some -- some -- at some point, at least
12 that's what I thought you just testified to, --
13 A Okay. Just trying to --
14 Q -- how -- how is it that she would have
15 arrived there?
16 A Oh, I don't know. I don't recall. I don't know.
17 Like I said, I -- I don't know she got there or what.
18 I know I radioed my -- my location, you know, possibly
19 that -- that vehicle on the Parkway, you know.
20 (Extended pause)
21 BY MR. HAMLIN:
22 Q Trooper Brennan arrived on the scene prior to
23 you approaching the motor vehicle; right?
24 A I don't know if she did or not, sir.
25 Q On page 2 of your report, third paragraph,

1 you --
2 A Page 2 of my report, sir?
3 Q Yes. Do you have the -- do -- do you have
4 the --
5 THE COURT: Which -- which -- which report is
6 that? What is that?
7 BY MR. HAMLIN:
8 Q Do you have the report? The --
9 THE COURT: Is that the --
10 MR. HAMLIN: Supplemental report. I think
11 that's D-5.
12 THE WITNESS: Okay.
13 BY MR. HAMLIN:
14 Q You have that in front of you; right? I'm
15 sorry; page 3.
16 A Okay.
17 Q It says page 2, but well, it's page 3. Page
18 3 of the report, the third paragraph, you indicated in
19 the one, two, three, four, fifth -- third line down
20 that you activated your overhead lights and conducted a
21 motor vehicle stop, and shortly thereafter, Trooper
22 Brennan arrived at the scene to assist. And then you
23 approached the vehicle.
24 A Right.
25 Q Okay. So, as you sit here today, you don't

1 know how it was that she came to be at that location?
2 A Yeah, I don't know if I called out earlier, "Hey,
3 you know, I'm on the Garden" -- I don't know
4 particularly -- like I said, it's -- it's been two
5 years, sir. I don't know if I, you know, went over the
6 radio or if I, you know, -- you call out the stop, they
7 know your location.
8 Q Okay. So, let's go back. While you're on
9 the Turnpike, you say you make an observation near
10 milepost 90, and at that point, you then follow the
11 black Honda to and through the toll plaza; right?
12 A Correct, sir.
13 Q Is it your testimony that after you began
14 following the black Honda and before you got to the
15 toll plaza, you made an observation of an alleged
16 illegal lane change?
17 A Failure to maintain lane.
18 Q Okay. You -- failure to maintain --
19 A Swerving.
20 Q All right. And I think you also testified
21 that once you went through the -- or the vehicle went
22 through the toll plaza, that there was some violation
23 that indicated that there was a failure to pay?
24 A Yeah, the toll -- the toll reader on the left-hand
25 side.

1 Q Okay. Now, heading south or north, coming
2 though the toll plazas on the Parkway after you get off
3 Exit 11, -- that's Exit 11; correct?
4 A Correct, sir.
5 Q There is a large area to the right?
6 A Correct, sir.
7 Q There used to be payphones on that area;
8 right? It's like a rest sort of, like a pull-over
9 area.
10 A Believe so. Believe so.
11 Q What prevented you from pulling the motor
12 vehicle over at that location, given the fact that that
13 is a location where vehicles pull over and stop all the
14 time?
15 A There's no particular reason, sir.
16 Q All right. Now, rather than pull the vehicle
17 over there, you continued on the Parkway north;
18 correct?
19 A Correct, sir.
20 Q All right. As you continue on the Parkway
21 north, there are several exits prior to the Clark exit;
22 right?
23 A Correct.
24 Q All right.
25 A I'm not 100 percent familiar with the Parkway, but

1 yes.
2 Q All right, but you would have seen them,
3 because you were following this motor vehicle; right?
4 A Correct.
5 Q There's the Metro Park exit; right?
6 A Correct.
7 Q And there's even a little area where members
8 of the State Police sit on the side of the road to
9 determine if people are speeding or violations; right?
10 It's right in the middle.
11 A Oh, I -- I don't know, sir.
12 Q You've never seen that before?
13 A There's a U-turn somewhere around there, yeah.
14 But I'm not familiar with -- with Parkway guys, like
15 where they sit and whatnot.
16 Q Okay. But you do know that there is an exit
17 for Metro Park; right?
18 A I do. I've dropped people off there before.
19 Q All right. And you do know that there is an
20 exit for Islin, which is right around there --
21 A Okay.
22 Q -- as well; right? Right?
23 A Okay. I'm not -- I don't know if there is 100
24 percent. I don't -- like I said, --
25 THE COURT: That would be the Route 27 exit;

1 right?
2 MR. HAMLIN: Yes, Your Honor, for the record.
3 THE WITNESS: I'm not -- yeah, I'm not
4 familiar with that area, no.
5 THE COURT: You're not familiar with that.
6 Okay.
7 BY MR. HAMLIN:
8 Q All right. There's also an area on the
9 Parkway that is a designed and identified rest stop;
10 right?
11 A Correct.
12 Q Where you can get gas? There's a convenience
13 store there. It's an Exxon; right?
14 A Correct.
15 Q All right. What prevented you from pulling
16 the motor vehicle over there?
17 A There's no reason, sir.
18 Q Because you said the reason why you waited so
19 long to pull the motor vehicle over was out of safety
20 reasons, because there was nowhere to pull the vehicle
21 over.
22 A Well, safety reasons meaning I'm comfortable with
23 the shoulder that's -- that's provided, you know.
24 Q All right. So, you were uncomfortable with
25 the shoulder where vehicles ordinarily stop after the

1 toll plaza?
2 A Well, I don't know if I was prepared to make that
3 motor vehicle stop, you know. There's no -- safety is
4 my number one concern, but if I'm not prepared to make
5 a motor vehicle stop, you know, I'll wait and follow a
6 vehicle. I'll follow a vehicle for ten miles to, you
7 know, indicate a, you know, "Hey, I see an area that
8 I'm familiar, or you know, that I'm comfortable with".
9 Q Well, there was nothing in your report and
10 there was nothing in your testimony that you were
11 concerned that the operation of the vehicle was a
12 safety hazard for other drivers; correct?
13 A Correct.
14 Q All right. Now, --
15 (Extended pause)
16 MR. HAMLIN: May I have this document marked,
17 please?
18 THE COURT: Hold on, Mr. Hamlin.
19 (Off the record from 11:00:17 a.m. to 11:00:34 a.m.)
20 THE CLERK: (Indiscernible)
21 MR. HAMLIN: I think the last one was --
22 THE COURT: The last one was --
23 MR. HAMLIN: -- D -- D-5.
24 THE COURT: -- D-5.
25 THE CLERK: The last one (indiscernible).

1 This one is D-7.
2 THE COURT: You marked D-6?
3 MR. HAMLIN: What was D-6?
4 THE CLERK: D-6 was the transcript that you
5 just marked.
6 MR. HAMLIN: Oh, it could be.
7 THE WITNESS: I don't know. I'm trying --
8 MR. HAMLIN: I'll tell you one second.
9 THE WITNESS: So many (sic) paperwork up
10 here.
11 MR. HAMLIN: Yes.
12 THE CLERK: Okay. So, --
13 MR. HAMLIN: D-7.
14 THE CLERK: -- D-7.
15 (Exhibit D-7 marked for identification)
16 BY MR. HAMLIN:
17 Q I'm going to show you a document that's been
18 marked D-7 --
19 A Okay.
20 Q -- for identification.
21 A Thank you.
22 Q Now, I submit to you that D-7 is a document
23 that says, "E-Z Pass", "E-Z Pass records" for a Najah
24 Baker (phonetic). You're familiar with Najah Baker,
25 because her name is on the email; right?

1 A Yes. She was the passenger.
2 Q And she was the passenger in the car. Right.
3 Okay. I want you to turn to the second page.
4 A Okay.
5 Q The second page lists a date. It's -- it's
6 -- it's better to say it's from the one, two, three,
7 four, five, six, seven, eighth one from the bottom.
8 And there is a reference. It indicates, "Plaza entry
9 date time", and then, "Plaza, exit date time". You see
10 that at the top of the ledger?
11 A Okay.
12 Q There's an indication that on January 17th,
13 2016, a vehicle, the black Honda, enters the New Jersey
14 Turnpike at Exit 1 at 20:23 --
15 A You said the 16th?
16 Q The 17th.
17 A It's 17th, yeah. I thought you said 16th. Okay.
18 Q No, 17th. Says it enters the New Jersey
19 Turnpike at 20:23. You see that?
20 A Okay.
21 Q And then it says it exits the New Jersey
22 Turnpike on the 17th at 21:54. You see that?
23 A Yes.
24 Q Now, and it lists the -- the payment. You
25 see that?

1 A Yes, sir.
2 Q All right. There's also an indication that
3 that same vehicle enters the Turnpike at 23:42. That's
4 the line above it.
5 A Correct.
6 Q At Exit 11; right?
7 A Correct.
8 Q And then it exits the Turnpike -- I mean, the
9 -- the -- it exits at Exit 11 at 2:54 a.m.; right?
10 A Correct.
11 Q That would be after this whole arrest and
12 thing; right?
13 A Correct.
14 Q All right. So, and both indicate dollar
15 amounts that were paid. You see that at the -- on the
16 amount, and it says, "Amount balance"?
17 A Correct.
18 Q All right. Now, according to your testimony,
19 there was a failure to pay the toll.
20 A Correct.
21 Q Right?
22 A That's what the indicator read, sir.
23 Q All right. This document didn't read --
24 doesn't suggest that, though; right? Would you agree?
25 A I'm not sure exactly how the E-Z Pass like billing

1 works. Like, I'm -- I'm not, you know, expert or
2 familiar with this, but I mean, it looks as though --
3 it just says, "Amount", and I guess it's the balance, I
4 guess, would be the balance on -- on the account.
5 Q All right.
6 MR. HAMLIN: Do you have S-4 and 5?
7 BY MR. HAMLIN:
8 Q I want to show you two documents. One is
9 S-4, and one is S-5. You are familiar with these
10 documents; correct?
11 A Correct, sir.
12 Q These are documents that you created;
13 correct?
14 A Correct, sir.
15 Q So, I want you to look at S-4. Do you have
16 S-4?
17 A Which ticket numbers -- which ticket is that?
18 Q Well, it says, "S-4". The stamp says, "S-4".
19 A Okay. Yes.
20 Q The evidence -- well, --
21 A Yes, I -- I have it.
22 Q -- the marking says S-4.
23 A Yeah, I have it, sir.
24 Q You have it? Okay.
25 A I have it, sir.

1 Q That is the ticket that you wrote for failing
2 to pay a toll.
3 A Correct, sir.
4 Q Right? Is there any reason why you indicated
5 that the failure to pay the toll occurred on January
6 18th at 4:42 in the morning?
7 A Yeah, there's a perfect explanation. With this
8 new, what we call e-ticket, -- tickets used to be
9 handwritten, okay. With the new e-ticket, if you issue
10 a ticket from the computer, like I -- I believe, I'm
11 not 100 percent sure, these tickets were issued at the
12 station on a computer, and it -- the -- it actually,
13 automatically puts that time that it was issued. I
14 believe. You have to go in manually and change that.
15 Q What information do you have that indicates
16 that, in fact, that is what happened? Do you have a
17 document that says when you input it in the computer it
18 gives a different time and date? Because that wouldn't
19 make sense.
20 A No. Whatever -- whatever time that you're
21 actually issuing the ticket -- on -- on the side of the
22 road, you're issuing the ticket right then and there,
23 so it will generate that time that you're issuing the
24 ticket. But since I issued the ticket at the station,
25 it went with the station -- the -- the where you issued

1 the ticket and -- and time.
2 Q When did you realize that there was a
3 different date and a different time as to when the
4 alleged violation occurred?
5 A When did I -- I just realized that on the ticket.
6 Q So, even though you said the system, if you
7 put -- input it, will always give you a different time
8 that the ticket was issued for purposes of when the
9 incident occurred, and even though it may be a
10 different day, you never checked that to determine its
11 accuracy?
12 A You know, I overlooked it at that time, yeah. You
13 know, usually I'm pretty good at, "Hey, if I'm on the
14 computer", but you're issuing a ticket and it just, you
15 know, must have slipped my mind to go back and change
16 the time and date.
17 Q And you never looked at it before today to
18 determine that what you said was input was obviously
19 not the case? Because nothing happened on the 18th at
20 4:42 in the morning; right?
21 A Correct. Nothing happened.
22 Q All right.
23 A It's a -- it's a clerical error.
24 Q And the same goes for S-5?
25 A Correct.

1 Q You have the same error?
2 A Yeah, they -- they were issued at the same time,
3 correct.
4 Q So, how was it that the ticket for S-5 has
5 the same exact time?
6 A Because it's all in the same e-ticket program.
7 So, when you click off, you issue one ticket and then
8 you issue the next.
9 Q What specifically is the -- the -- the
10 statute that you said you cited for failing to pay
11 tolls? Is that a statute?
12 A Yeah, that's a Turnpike statute, sir.
13 Q Is it? What does it say?
14 A It says, "Failure to pay tolls", 19:9-1.19.
15 Q You sure that's what it says?
16 A 19:9-1.19, failure to pay tolls?
17 Q Oh. Are you sure that that's what that says?
18 A Yes, sir.
19 THE COURT: As to what says? The statute or
20 the ticket?
21 MR. HAMLIN: As to what the 19:9-1.9.
22 BY MR. HAMLIN:
23 Q Are you sure --
24 A No, it's -- it's 1.19.
25 Q 19:9-1.19.

1 A Yes, sir.
2 Q Right? That's what you wrote down here?
3 A Yes, sir.
4 Q Right? If I told you that section 19:9-1.19,
5 tolls, that it was amended to eliminate direct payment
6 by credit card as an acceptable means of toll payment
7 since this form of toll payment has been
8 administratively eliminated by the authority prior to
9 this re-adoption, would that refresh your recollection
10 as to what that actually says?
11 A No. Read that statute again. I -- I didn't -- I
12 didn't -- don't know that -- that part of the statute.
13 Q Well, you're a State Trooper.
14 A Correct.
15 Q You said that there's a statute that says,
16 "Failure to pay tolls is a violation".
17 A Correct.
18 Q And that's the statute that you identified;
19 right?
20 A Correct.
21 THE COURT: What -- what's the statute? Say
22 this slowly again for me, please.
23 THE WITNESS: It's 19: --
24 THE COURT: Right.
25 THE WITNESS: -- 9-1.19.

1 THE COURT: Yeah, 9., okay, 9-1.19?
 2 THE WITNESS: Yes.
 3 MR. HAMLIN: And -- and, Your Honor, if -- if
 4 -- maybe Your Honor can -- can take judicial notice,
 5 that is not a statute.
 6 THE COURT: I -- I have that in the -- well,
 7 I have it in the Administrative Code.
 8 MR. HAMLIN: Correct.
 9 THE COURT: Right. Okay.
 10 MR. HAMLIN: It's an administrative
 11 regulation.
 12 THE COURT: Administrative regulation.
 13 MR. HAMLIN: And it makes no reference to
 14 failing to pay a ticket (sic). It just essentially
 15 says, "You can't pay at the toll booth a -- with the
 16 use of a credit card."
 17 THE COURT: Hold on.
 18 MR. HAMLIN: At least that's what I have.
 19 THE COURT: Because I looked up that issue
 20 and I thought I had a copy of the substantive code
 21 provision itself. For right now, I only have the --
 22 MR. HAMLIN: It -- it -- it -- it's fine,
 23 Your Honor.
 24 THE COURT: I only have the index, which --
 25 which labels it, "Failure to pay tolls", with a \$55

1 fine, but we can look that up.
 2 MR. HAMLIN: That's fine, Your Honor.
 3 BY MR. HAMLIN:
 4 Q Okay. So, --
 5 THE COURT: Oh, I -- I have it here.
 6 (Extended pause)
 7 THE COURT: What I -- what I have is, I
 8 thought the relevant section of this code provision,
 9 because there's paragraphs (a) through (h), and I
 10 thought the one that was relevant was (f), "It is
 11 hereby declared to be unlawful, and contrary to the
 12 toll collection monitoring system rules in N.J.A.C.
 13 19:9-9, for any person to operate, or owner to permit
 14 to be operated, a vehicle in an E-Z Pass toll lane of
 15 the roadway, unless the vehicle contains a functioning
 16 and registered electronic toll collection device
 17 compatible with the electronic toll collection system
 18 employed or utilized by the Authority."
 19 MR. HAMLIN: I agree, Your Honor, which is
 20 not failure to pay toll.
 21 THE COURT: Okay. That's a legal argument we
 22 have.
 23 MR. HAMLIN: That's -- that's -- that's
 24 neither here nor there at this -- at this juncture.
 25 THE COURT: Okay.

1 BY MR. HAMLIN:
2 Q So, you -- you continued to follow the
3 vehicle on the Parkway; correct?
4 A Correct, sir.
5 Q And can you tell me in your report where you
6 indicate that the vehicle was involved in motor vehicle
7 violations after it went through the toll booth?
8 A I don't indicate that, sir.
9 Q Nothing; right? Right?
10 A Correct.
11 Q All right. And is it your testimony -- well,
12 strike that. So, you ultimately activated your lights
13 and sirens to effect a motor vehicle stop; right?
14 A Correct.
15 Q Now, the DVR process -- it's called DVR;
16 right?
17 A DIVR, yeah.
18 Q D -- DIVR, sorry. Used to be MVR, but it's
19 now DIVR.
20 A Yeah. Correct. Correct.
21 Q That DIVR can be operated two ways.
22 A Three ways.
23 Q Okay. Three ways. Certainly, one, once you
24 turn the lights and sirens on, it comes on
25 automatically; right?

1 A Correct.
2 Q And then it -- it -- I think it backs up a
3 little but before it actually --
4 A Yeah, I don't know. There's different systems
5 that we use. One backs up, one starts the initial as
6 you're -- as you turn on the lights.
7 Q All right. And you can also activate it
8 manually; right?
9 A Manually, correct.
10 Q What's the third way?
11 A Via your voice box. It has a -- a trigger on it.
12 Q All right. Obviously, if you're not out of
13 the vehicle, that -- you don't -- you don't activate it
14 manually, or do you? The third way.
15 A Via my radio -- or, I'm sorry; my microphone pack?
16 Q Yes.
17 A No. Not normally.
18 Q So, you were -- you were following this black
19 Honda for more than a minute; right?
20 A Like 60 seconds is your literal minute, or?
21 Q In my world, 60 seconds is a minute. I don't
22 know --
23 A Correct.
24 Q Okay. More than a few minutes; right?
25 A Correct.

1 Q Maybe 5 to 8 minutes, 10 minutes?

2 A I don't recall how long, sir.

3 Q All right. At least the distance from the
4 Turnpike south to the milepost in Clark where you --

5 A Well, from -- from Turnpike north.

6 Q I'm sorry; Turnpike north to the milepost in
7 Clark where you effected the arrest.

8 A Correct.

9 Q All right. What prevented you during that
10 time period since you came upon the vehicle as a result
11 of the email, to put on your -- your DIVR to capture
12 what was allegedly being observed by you?

13 A What prevented me? Nothing prevented me.

14 Q All right.

15 A It's just not a normal practice.

16 Q All right. Is it your testimony that it's a
17 normal practice that you get these BOLOs in the form of
18 an email to be on the lookout of potential violators of
19 the criminal laws who may be trafficking weapons
20 through the New Jersey Turnpike?

21 A State that question again.

22 Q Is it your testimony that it's a regular
23 practice that you would get these emails about people
24 trafficking weapons or bringing a cache of weapons
25 through the New Jersey Turnpike?

1 A Yes. Yeah. Various other means, too. Like we
2 have track fliers and stuff like that, but yes.

3 Q All right. So, this isn't an isolated
4 incident where you've -- when I say "incident",
5 isolated that you received an email and you never did
6 this before. You've done this before where you've
7 gotten these emails and you've identified vehicles that
8 were in the emails?

9 A I've received -- I don't know particular emails
10 that I've actually -- I've known other troopers to
11 locate vehicles, but I've located vehicles off of a
12 BOLO or, you know, --

13 Q Okay. So, this isn't -- this -- this wasn't
14 just a run-of-the-mill potential traffic stop; this was
15 someone in the vehicle or the vehicle may possess
16 weapons kind of investigation; right?

17 A No. I mean, it -- you're -- you're -- you're
18 heightened, you know, obviously, you know. You're --
19 you're -- you're height -- you're -- you're -- doesn't
20 mean there's going to be guns in the car.

21 Q Right, but you, not knowing what the vehicle
22 may possess or may not possess, you have more
23 information about that particular vehicle, the Honda or
24 the Infinity, than you would have just seeing a car
25 driving on the highway; right?

1 A Correct.
2 Q So, you had at least a heads-up, for lack of
3 a better term, that if you see this car, this car might
4 have guns in it; right?
5 A Correct.
6 Q And -- and according to your own safety,
7 you're going -- if you see the car, you're going to
8 approach the car with a heightened sense of concern or
9 for your safety, because the car might have weapons in
10 it; right?
11 A Correct.
12 Q All right. So, you ultimately pulled the car
13 over; right?
14 A Correct.
15 Q And because you had the email, what you do is
16 you contact Officer or Detective Czech; right?
17 A Correct.
18 Q You let him know that, "I've found the -- the
19 black Honda and I'm about to effect a -- a -- a -- I'm
20 about to pull it over"; right?
21 A Correct. Along those lines, yeah.
22 Q Okay. And how did you contact him? Because
23 that's not on the dispatch either.
24 A Right. I guess I contact him via the number that
25 was provided per the email.

1 Q How did you do that?
2 A I have his work number.
3 Q And you called during the -- the -- you
4 called using the microphone?
5 A No. My personal cell phone, sir.
6 Q Okay. And did you keep a record of that --
7 A No.
8 Q -- phone call?
9 A Not -- no.
10 Q Okay. So, you call him up on the cell phone.
11 Why don't you do that on dispatch?
12 A He's a specialized unit. He doesn't have -- like
13 he doesn't have our -- like I don't know where he's at
14 or what he's doing. I don't know his particular
15 day-to-day basis.
16 Q So, is your testimony that his motor vehicle
17 is not equipped with a radio?
18 A Oh, I don't know what it is or is not. I can't --
19 I can't testify on his behalf -- on -- on his troop car
20 or whatever he operates.
21 Q Do you believe that there are motor vehicles
22 that the State Troopers use, even in undercover
23 capacity, that do not have the ability to contact
24 dispatch?
25 A I don't know. I mean, they may have a personal

1 radio, like a personal issued State Police radio. I
2 don't -- I don't know the inner-workings of other
3 units.
4 Q All right.
5 A I know every car that I operate has a State Police
6 issued radio, sir.
7 Q All right. And you contacted him because you
8 had that information there might be guns in the car,
9 "I'm just letting you know because I'm pulling the car
10 over; right"?
11 A Correct.
12 Q All right. Now, when you pulled the car
13 over, you didn't have a search warrant to search the
14 car; right?
15 A No, I don't, no.
16 Q Right. Right. And you know in order to get
17 a search warrant, you have to provide information in
18 the form of an affidavit that sets forth specific facts
19 as to why you believe something should be searched;
20 right?
21 A Correct.
22 Q Whether it's someone's house, whether it's
23 someone's car; right?
24 A Correct.
25 Q All right. And that's one way that you can

1 search someone's personal property; right?
2 A Correct.
3 Q Another way you can search someone's personal
4 property is if the person allows you to search their
5 personal property through consent; right?
6 A Correct.
7 Q You can ask the person, "I'd like to search
8 your car. You have the right to refuse, but I'd like
9 to search your car"; right?
10 A Correct.
11 Q There are other ways in which you can search
12 a person's car. If you see something in the car in
13 plain view that you reasonably believe is contraband,
14 something that's illegal; right?
15 A Correct.
16 Q Okay. So, when you pulled the car over, you
17 had reason to believe that the car might contain
18 weapons; right? Because of the email.
19 A Correct.
20 Q You didn't have a search warrant, so you knew
21 you couldn't search the car without a search warrant;
22 right?
23 A Correct.
24 Q You didn't have consent to search the car,
25 because you never even asked for that; right?

1 A Correct.
2 Q And you didn't make any observations of
3 anything illegal in the car that would have allowed you
4 to search the car; right?
5 A No.
6 Q All right. But you were aware that if you
7 indicate that you smell marijuana, that that might be a
8 way to search the car; right?
9 A Well, I know that's -- that's one of our
10 guidelines that we go by, yes, sir.
11 Q Right. You get training on that; right?
12 A Correct.
13 Q And you had training on that; correct?
14 A Correct.
15 Q And part of your training was if you effect a
16 motor vehicle stop and you smell marijuana, you can ask
17 for the occupants of the car to exit the car; correct?
18 A Correct.
19 Q And you can ask the occupants to exit the car
20 and then search the car to see if there is, in fact,
21 marijuana; correct?
22 A Correct.
23 Q All right. Are you aware that the law
24 requires you as a police officer to find something
25 illegal on a person before arresting them?

1 A As far as what, sir?
2 Q Well, you can't just place me in handcuffs as
3 we sit here in this courtroom, and then search me to
4 determine if I have an illegal weapon, or a knife, or
5 contraband on me; right?
6 A I just go by our guidelines at the State Police.
7 Q Well, I'm just asking that question. Is it
8 your belief that you can approach a citizen, or a
9 vehicle, or someone's house, place them in handcuffs,
10 read them their rights, and then search to find out if
11 there's something illegal on the person, in their car,
12 or in their house? You can't do that; can you?
13 A I mean, I don't -- you know, I don't go around
14 handcuffing people for no reason. I -- I -- I follow
15 the guidelines set forward by the New Jersey State
16 Police.
17 Q Right. Which essentially, because you've
18 been a police officer for so long, because you have
19 training, and I assume you have training on what you
20 are permitted to arrest a person for; right?
21 A Correct, sir.
22 Q You can't arrest a person unless you've made
23 an observation that the person has done something that
24 violates the law; right? First.
25 A Correct.

1 Q So, to your point, you can't go around
2 placing people in handcuffs, reading them their rights,
3 and then searching them to justify the fact you just
4 placed them in handcuffs; right?
5 A Correct.
6 Q It's got to be the other way around; right?
7 A Other way around is what?
8 Q You got to first see that they've done
9 something illegal. Like, "Ah, I see Mr. Hamlin, that's
10 a gun."
11 A Correct.
12 Q -- "You got a permit for that gun?" "No."
13 "Okay. I'm going to place you under arrest, put you in
14 handcuffs, read you your rights, because you don't have
15 a permit for the gun. It's illegal for you to possess
16 a gun without a permit."
17 A Correct.
18 Q "Oh, Mr. Jones, that's cocaine? That you
19 know is illegal. I'm placing you under arrest. I
20 don't even have to ask you if you have a permit or
21 anything for that," --
22 A Correct.
23 Q -- "because it's illegal."
24 A Correct.
25 Q All right. When you pulled over the car, you

1 started asking questions; right? Of the driver of the
2 car. Yes?
3 A Correct.
4 Q You asked him questions of, for his
5 credentials; right?
6 A Correct.
7 Q And at some point, you asked if he smoked
8 marijuana; right?
9 A I don't think I -- I don't know if -- I don't
10 think I -- I don't recall I asked him if he smoked
11 marijuana.
12 Q Okay.
13 A We can -- I mean, I -- if --
14 Q I'm -- I'm not saying you did or you didn't.
15 Do you remember if you did?
16 A I don't recall if I did or not, sir.
17 Q All right. You did, however, ask Mr. --
18 well, you asked the driver where he was coming from;
19 right?
20 A Correct.
21 Q All right. And according to your report, he
22 indicated he was coming from Washington, D.C.; right?
23 A Correct.
24 Q And at that point, you then advised Trooper
25 Brennan, who was there with you, that you smelled,

1 according to you, raw marijuana; right?
2 A Correct.
3 Q All right. As you sit here today, --
4 A There was other observations, too, sir.
5 Q I'm just asking --
6 A Okay.
7 Q -- that question. As you sit here today, did
8 you ever discovery marijuana that was tested or that
9 was secured by you based on what you say you smelled?
10 A No.
11 Q All right. So, as you sit here today, there
12 is no marijuana; right?
13 A That was recovered, no, sir.
14 Q Okay. You asked the driver and the passenger
15 if they were medical marijuana patients; correct?
16 A Yes, sir.
17 Q And neither said that they were; right?
18 A Correct.
19 Q Is it a crime to not be a patient of medical
20 marijuana?
21 A It's not a crime, no.
22 Q All right. So, once you asked the passenger
23 or certainly, the driver if he was a patient of medical
24 marijuana, why then at that point -- well, strike that.
25 Once -- after you asked that question and the response

1 was, they were not medical marijuana patients, --
2 A Correct.
3 Q -- you then placed Mr. Cohen, the driver, in
4 handcuffs.
5 A Correct.
6 Q Right? Right?
7 A Correct, sir.
8 Q At that point, you had not observed any guns;
9 correct?
10 A No.
11 Q Right. You had not made any observation of
12 anything else illegal, because if you had, such as
13 marijuana, you would have that in court today; correct?
14 A Any observations?
15 Q Yes.
16 A What -- what are you trying -- say that again. I
17 don't understand the question.
18 Q As you stand here today, as you're on the
19 stand, it's 11:30, you already testified you never
20 found any marijuana; right?
21 A Well, we never recovered any marijuana, no.
22 Q Which is the exact same thing as saying you
23 didn't find any marijuana; right? Because if you have,
24 you would have made it a -- a -- a -- a charge in this
25 case; right?

1 A Correct.
2 Q You're not going to have somebody have
3 marijuana in their car, or in their person, or in their
4 possessions, and then not charge them, because you know
5 that's a violation of the law.
6 A Correct.
7 Q So, as you sit here today, you never charged
8 Mr. Cohen or Ms. Baker with being in possession of
9 marijuana; correct?
10 A Correct.
11 Q And as you sit here today, because you
12 already testified, you never found any marijuana;
13 right?
14 A Well, no, we never recovered any marijuana.
15 There's a big difference between find and recover. I
16 mean, there's -- there's times that you can't recover
17 stuff because it's so minute.
18 Q Well, in this case, you never recovered
19 anything illegal that would be considered marijuana;
20 right?
21 A Correct.
22 Q Okay. So, because you never recovered
23 anything illegal that would be considered marijuana
24 before placing Mr. Cohen under arrest, you had no basis
25 to place him in handcuffs; did you?

1 A Yeah, that's our protocol, sir. Absolutely that's
2 our protocol.
3 Q Your protocol is that you can place people
4 under -- place people in handcuffs --
5 A Correct.
6 Q -- put them in -- or give them marijuana
7 (sic) -- strike that. Give them Miranda warnings, even
8 though they haven't violated any particular law?
9 A That's -- that's the New Jersey State Police
10 policy, sir, yes.
11 Q You know that policy is against the law?
12 A That's way above my pay grade to figure that out.
13 Q Well, you already testified under oath that
14 you can't arrest someone, put them in handcuffs first,
15 and then search. You just testified to that; right?
16 A Right.
17 Q So, knowing that that is a violation of the
18 law based on your training, why did you do it?
19 A Because that's the protocol set forward by the,
20 you know, Attorney general and the State Police.
21 Q So, it's your testimony that even though you
22 know it's illegal, --
23 A Well, no, I don't know it's -- no, no, it's --
24 it's --
25 Q You just --

1 A To me -- to me, that's -- whatever I'm trained as
2 a police officer, you know, raw or burnt marijuana,
3 they're pulled out of the vehicle, handcuffed,
4 Mirandized and searched -- searched, Mirandized. Yes,
5 that's -- that's what I go by.

6 Q The fact that you testified that your
7 training tells you that a person can only be arrested
8 if they violate the law, it's your understanding that
9 the State Police has a policy, not the law, a policy
10 that a person can be placed in handcuffs, can be
11 Mirandized even if they don't violate the law, if you
12 want to search afterwards to see if you can justify it?

13 A Well, it's the -- the State Police and Attorney
14 General come up with a policy. It's not -- it's not me
15 to make that policy.

16 Q Okay. As you sit here today, as a police
17 officer who's sworn and took an oath, do you think it's
18 legal to arrest someone --

19 MS. MIELKE: Objection, Your Honor, as to
20 Trooper Travis testifying and making a legal
21 determination.

22 MR. HAMLIN: Your --

23 THE COURT: Finish the question first.

24 BY MR. HAMLIN:

25 Q As you sit here today, do you think it's

1 legal, that it's within the boundaries of the law as a
2 police officer who was sworn to uphold the law, --

3 THE COURT: Why don't you just -- if I could
4 suggest. As opposed to making it legal, why don't you
5 inquire as to his understanding of the law? Because
6 he's clearly trained as to --

7 MR. HAMLIN: That's fine.

8 BY MR. HAMLIN:

9 Q If I'm not mistaken, you've received training
10 on when to effect an arrest; correct?

11 A Yes, sir.

12 Q And is it your understanding that once you
13 place someone in handcuffs, you've placed them under
14 arrest?

15 A No, you've -- you've detained. I've detained
16 people many, many of times just by placing handcuffs.
17 If I'm, you know, if I'm alone out in the woods and,
18 you know, I've -- I've done it many of times. You're
19 -- you're not -- that doesn't effect an arrest. You're
20 not effecting arrest by placing somebody in handcuffs.

21 Q All right. You weren't alone in the woods on
22 the -- the --

23 A Correct.

24 Q -- date in question. In fact, there was
25 another officer there; right?

1 A Correct.
2 Q Both of you had weapons on you; correct?
3 Yes?
4 A Correct, sir.
5 Q All right. And you certainly -- well, are
6 you trained that once you place a person in handcuffs
7 and give them Miranda warnings, that it is because you
8 want to ensure that the person doesn't say anything
9 else that would incriminate themselves potentially, or
10 they'd have a right to an attorney --
11 A Right. Correct. Sorry.
12 Q -- as a result of being placed under arrest?
13 A Well, you can Mirandize anybody for any reason.
14 Q Correct. But is it your testimony that you
15 ordinarily Mirandize a person without -- well, strike
16 that. You certainly can Mirandize a person without
17 placing them in handcuffs; right?
18 A Correct.
19 Q Is it your testimony that when you place
20 someone in handcuffs and you Mirandize them, that they
21 are not under arrest?
22 A Not always, no.
23 Q Okay. When you placed the driver of the
24 vehicle, Mr. Cohen, in handcuffs, he clearly was not
25 free to leave; right?

1 A Correct.
2 Q When you gave Mr. Cohen Miranda warnings, you
3 advised him that at that point, he had the right to
4 counsel; correct?
5 A Correct.
6 MR. HAMLIN: One second, Your Honor, if I
7 may?
8 THE COURT: Yes.
9 (Extended pause)
10 BY MR. HAMLIN:
11 Q All right. So, after you placed Mr. Cohen,
12 the driver, in handcuffs and read his Miranda warnings,
13 you placed him in the motor vehicle -- in the police
14 vehicle; right?
15 A My -- my -- the rear of my trooper car, sir.
16 Q Okay. And he clearly wasn't free to leave at
17 that point; right?
18 A No, sir.
19 Q All right. And then you proceeded to search
20 the vehicle?
21 A Well, I removed the passenger after that.
22 Q She was placed in handcuffs as well?
23 A Yes.
24 Q And she was placed in Trooper Brennan's
25 vehicle?

1 A Yes.
2 Q All right. She wasn't free to leave either;
3 right?
4 A No.
5 Q All right. She was read her Miranda rights
6 as well; right?
7 A Correct.
8 Q And then, at that point, you didn't ask Mr.
9 Cohen or Ms. Baker after you placed them in handcuffs,
10 read them Miranda warnings, knew that they were not
11 free to leave, as to whether or not they consented to
12 the search of the car; right?
13 A No, sir.
14 Q You obviously did not seek a warrant to
15 search the car; right?
16 A No, sir.
17 Q And the car was stationary at that point;
18 right?
19 A Correct.
20 Q You got two people in -- in handcuffs in the
21 rear of motor vehicles; right?
22 A Correct.
23 Q In the rear of your police vehicle; right?
24 A Correct.
25 Q And then other State Troopers or

1 investigators were en route; right?
2 A Correct.
3 Q All right. So, the motor vehicle, at that
4 point, was not going to leave; right?
5 A No.
6 Q Because they were in handcuffs.
7 A Correct.
8 Q The operators; right? So, what prevented you
9 from seeking a warrant at that time?
10 A It's our policy that we search the vehicle if we
11 smell raw or burnt marijuana.
12 Q Okay. So, it's your testimony that knowing
13 that that car potentially had weapons in it, because
14 you knew that was a possibility; right?
15 A Possibility, yes.
16 Q That the only way that you could determine
17 that is to search the car; right?
18 A No.
19 Q Well, the only way to determine if there was
20 a weapon in that car would be to search that car,
21 whether you have a warrant, or plain view, or consent.
22 That's the only reason. That's the only way, is to
23 search the car; right?
24 A Well, that's not why I searched the vehicle. It's
25 for drugs.

1 Q I'm not saying that's why you searched the
2 vehicle. What I'm saying is the only way you could
3 have found out if, in fact, there were guns in the car
4 would be to conduct a search of the car; right?
5 A Correct.
6 Q And you knew that since you didn't have a
7 warrant, and you knew since you didn't have consent,
8 and you knew since you didn't observe anything in plain
9 view, the only other way you could search the vehicle
10 is if you said you smelled marijuana; correct?
11 A No.
12 Q What would the other way be?
13 A There is no other way, but I mean, that's --
14 Q So, that's a yes; right?
15 A No. You're putting words into my mouth. You're
16 saying that --
17 Q I'm asking you a question, sir.
18 A Okay. Say -- ask -- ask it again.
19 Q The question is, the only way you could have
20 determined if, in fact, there were weapons, which was
21 the reason why you got the email and the reason why you
22 initially followed the vehicle, was to search the
23 vehicle. And the only way you could have searched the
24 vehicle was if you had a warrant, which you did not; if
25 you had consent, which you did not; if you saw

1 something in plain view, which you did not; or if you
2 say you smelled marijuana; right?
3 A Correct.
4 Q So, out of those three options, the fourth
5 one, the smell of marijuana in your mind, was the one
6 way you could search the car; right?
7 A No.
8 Q What was the other way?
9 A I -- I -- it's my observation. It's what I smell.
10 It's not because I wanted to search the car.
11 Q Well, you said you smelled marijuana; right?
12 A Correct. And it's our policy that we search a
13 vehicle.
14 Q All right. You say you smelled marijuana,
15 never found any marijuana, there's no marijuana in --
16 that was ever charged to either of the people; right?
17 A Correct.
18 Q All right. So, if I tell you that I smell
19 marijuana right now, you don't know if I'm telling the
20 truth or if I'm lying, because you don't know what I
21 smell; right?
22 A I don't know what you smell, sir, no, sorry.
23 Q Okay. So, I could say that. That doesn't
24 mean that there's marijuana; right?
25 A Doesn't mean it, no.

1 Q Okay. Just like the reason you said you
2 searched the car was because you smelled marijuana, and
3 there was no marijuana that was ever found. And in
4 fact, both drivers said they don't smoke marijuana;
5 right?
6 A Correct.
7 Q Okay. And I think you testified that because
8 you observed air fresheners in the car, that that's
9 indicative of marijuana possession; right?
10 A It's a piece of a -- a -- a -- a -- part of a
11 training. You know, like it's -- it's an indicator
12 that, you know, they're masking something or they're
13 attempting to mask the odor of marijuana.
14 Q Okay. So, it's possible, because my mom has
15 one of those air fresheners, that she could be masking
16 the smell of marijuana?
17 A No, not just one. There's multiple -- there were
18 multiple air fresheners, sir.
19 Q No, multiple. That's possible; right?
20 That's what you're saying?
21 A Possible. I don't know.
22 Q Okay. You didn't see anything such as
23 rolling papers in the car that you confiscated or
24 seized and said, "Ah, that's indicia of marijuana
25 possession or use"; right?

1 A Rolling papers? No, I didn't -- didn't get any
2 rolling papers.
3 Q No pipe? Nothing like that; right?
4 A No.
5 Q You said you saw a cigar; right?
6 A There was a cigar, yeah.
7 Q Did you seize that cigar?
8 A No, I didn't.
9 Q What kind of cigar was it?
10 A Brown cigar.
11 Q Is it your testimony that if you have a cigar
12 in your car, that that could be indicative of marijuana
13 use?
14 A It's part of the puzzle. It's part of, you know,
15 your totality of it, yes.
16 Q So, people who have air fresheners, multiple
17 air fresheners and cigars in their car could be
18 searched by the State Police, because they're -- you
19 guys are taught that that's potentially indicative of
20 marijuana use?
21 A Well, you also have to have a smell of marijuana.
22 Q Would you agree with me that the smell of
23 marijuana is something that is subjective?
24 A It has a -- a distinct smell.
25 Q Is there any reason why you didn't hear any

1 other of the officers who arrived on the scene on that
2 date indicate that they too smelled marijuana?
3 A I don't know what they indicated or not. Like I
4 said, I was searching the vehicle.
5 Q I don't want to go back through the -- the
6 video. We could, but we don't have much time. But I
7 don't recall anybody else hearing that or saying that.
8 A There might have been some talk about it. I don't
9 know.
10 Q You found nothing that was illegal on Mr.
11 Cohen or Ms. Baker; correct?
12 A No.
13 Q And you didn't find anything illegal inside
14 the passenger compartment of the car either; correct?
15 A I believe the rounds were found; ammunition rounds
16 were found.
17 Q Where was that?
18 A In a shot glass. Spent -- spent ammunition, which
19 -- I mean, it isn't illegal to possess spent ammunition
20 rounds.
21 Q Okay. So, that would be a no; correct?
22 A Inside the passenger compartment? Is that what
23 you said?
24 Q Yes.
25 A No.

1 Q All right. So, we know that you then
2 searched the hood of the car; right?
3 A Correct, sir.
4 Q All right. And then, if I'm not mistaken,
5 you said you saw a large black canvas bag or something?
6 A Correct.
7 Q All right. Now, at that point, you knew the
8 bag wasn't marijuana; right?
9 A Well, I didn't know what it was at first, sir.
10 Q Okay. Did you touch the bag?
11 A When it was in the engine compartment?
12 Q Yeah.
13 A Yes.
14 Q Okay. And when you touched it, it's your
15 belief that it was marijuana?
16 A No.
17 Q Okay. After you touched it, you didn't seek
18 permission to seize that item; correct?
19 A No.
20 Q Because it was wrapped up; right?
21 A Correct.
22 Q Didn't ask for consent to seize the item by
23 Mr. Cohen or Ms. Baker; right?
24 A No.
25 Q You didn't seek a warrant at that point?

1 A No.
2 Q Okay. Nothing prevented you from doing that
3 either; right?
4 A From seeking a warrant?
5 Q Yeah.
6 A It's not our policy that we do on the side of the
7 road, sir.
8 Q How come when Mr. Cohen asked you why you
9 were arresting him or why you put him in handcuffs, you
10 didn't explain? That's policy?
11 THE COURT: I'm sorry; what was your
12 question, Counsel?
13 BY MR. HAMLIN:
14 Q How come you didn't explain to Mr. Cohen when
15 he asked you why he was in handcuffs that you didn't
16 explain to him?
17 A I'm not required to explain why I place anybody
18 under arrest, sir. And I believe I did say, you know,
19 "Just maybe be quit until I read you your rights". But
20 I did tell him I indicated the small of raw marijuana.
21 (Extended pause)
22 MR. HAMLIN: I don't think I have any more
23 questions, Your Honor. Just one moment.
24 THE COURT: Take your time.
25 (Extended pause)

1 MR. HAMLIN: Just one last thing.
2 BY MR. HAMLIN:
3 Q You indicated that you're not required to
4 explain to someone when you put them under arrest;
5 right?
6 A Well, I mean, I -- if somebody asks, I usually
7 tell, like, "Hey, this -- you know, just relax, this is
8 why, you know." I -- I like to be very open. I don't
9 like to have people fight me because, you know, they
10 don't know why they're being arrested, but.
11 Q Okay.
12 MR. HAMLIN: I have no further questions.
13 THE COURT: Any redirect?
14 MS. MIELKE: I do have a number of questions,
15 Judge.
16 THE COURT: Need to take a few minute break?
17 Let's -- let's resume at 12:00.
18 MS. MIELKE: Okay. Great. Thank you.
19 MR. HAMLIN: Thank you.
20 (Off the record from 11:50 a.m. to 12:01 p.m.)
21 THE COURT: All right.
22 MS. MIELKE: Thank you, Your Honor.
23 REDIRECT EXAMINATION BY MS. MIELKE:
24 Q I just have a few questions for you, Trooper.
25 Let's first start talking about your reports. How do

1 you go about preparing those reports? The
2 investigative reports. Like, as in the report you have
3 in front of you right now.
4 A Correct.
5 Q What's your procedure in preparing those
6 reports?
7 A Well, we -- we log onto RMS, which is our reports,
8 you know, in -- we log in a invest report. This
9 particular report is -- is gathered off of whatever
10 report the initial unit took, because it's called a
11 supplemental investigation report. And then we just
12 fill in all the boxes that we're required to fill in.
13 And then we type in our narrative.
14 Q Okay. And was this particular report
15 prepared shortly after this incident occurred?
16 A You start it, and then you continue it, yeah.
17 Q Okay. So, what is written in the report,
18 does that come from your memory or were there notes
19 that you had taken during the course of this patrol and
20 this incident?
21 A I didn't take any notes personally, no.
22 Q Okay. So, this particular report was
23 prepared from your memory?
24 A Memory, yeah.
25 Q Okay. Now, in the course of preparing these

1 reports, and in particular, this one, is it your
2 practice to include every single detail of your
3 investigation or the incident itself?
4 A Say that again. I'm sorry.
5 Q Is it -- is it your practice to include every
6 single detail in the report that you prepare?
7 A You try to be as, you know, --
8 Q Or does it act as a summary of what happened?
9 A Yeah. I'm not --
10 MR. HAMLIN: Objection, Your Honor. Leading
11 the witness.
12 THE WITNESS: Oh, I'm sorry. I --
13 THE COURT: That's okay. Tell me what's your
14 objective in preparing your reports as to the nature of
15 the detail that you --
16 THE WITNESS: Okay. Yeah, I -- I like to get
17 the -- the overall details of it, you know, the -- the
18 main points, the, you know, of -- of what actually
19 happened.
20 BY MS. MIELKE:
21 Q Okay. I'm just going to point your attention
22 now to that email that had been disseminated and that
23 you received prior to your patrol on this date. It's
24 the State's Exhibit, sorry, S-2. How frequently do you
25 receive these types of emails in the course of your

1 duties?
2 A Oh, all the time.
3 Q And what do you mean by "all the time"?
4 A Like, you can go on and check your emails, and
5 there's, you know, emails, there's, you know, we also
6 have on our internet site, you know, topics like --
7 THE COURT: This is -- this is the -- the --
8 the B-O-L-O, the be on the lookout type email?
9 MS. MIELKE: This is the be on the lookout.
10 THE COURT: Do these come in daily or they
11 come in like -- what typically --
12 THE WITNESS: Dailies. Daily.
13 THE COURT: -- what --
14 THE WITNESS: Daily.
15 THE COURT: Daily you're getting these types
16 of emails?
17 THE WITNESS: Yeah. Daily.
18 THE COURT: Okay.
19 THE WITNESS: You know, you could go a day or
20 two without it. It's -- it's, you know, --
21 THE COURT: So, it's somewhat -- it's -- it's
22 not -- okay. So, there's daily or every couple days.
23 So, it's rather common.
24 THE WITNESS: It's, yeah, generally common,
25 yes.

1 THE COURT: Okay.
2 BY MS. MIELKE:
3 Q Okay. And these types of be on the lookout
4 emails, do they often include information as to a
5 particular individual or particular vehicle?
6 MR. HAMLIN: That's a leading question, but
7 you can ask him what it includes.
8 BY MS. MIELKE:
9 Q What -- what types of information do these
10 emails typically include?
11 A Names, pictures, what the type of investigation
12 is, vehicles. I mean, you name it, it's been in there,
13 you know.
14 Q Okay. Now, in terms of this particular
15 incident, at what point did you become aware that the
16 black Honda identified in this email and that you
17 observed on the road was the same black Honda from this
18 particular email?
19 A When I saw the -- the car on the road.
20 Q Okay. Was it -- was it after or before these
21 vehicle or, excuse me, traffic violations had occurred?
22 MR. HAMLIN: Your Honor, he's -- that's asked
23 and answered, and it's leading.
24 MS. MIELKE: Your Honor, I'm just trying to
25 clarify his testimony.

1 THE COURT: I'm going to sustain the
2 objection. He's correct.
3 MS. MIELKE: Okay.
4 THE COURT: Rephrase it. If you need to.
5 BY MS. MIELKE:
6 Q Okay. Well, Trooper, --
7 THE COURT: I mean, it had to be -- had to be
8 after he first saw the vehicle, because he -- because
9 it's clear; he saw the vehicle and then he observed
10 the --
11 MS. MIELKE: Right, but, --
12 THE COURT: -- violations.
13 MS. MIELKE: -- Your Honor, he did testify
14 that initially he -- he just saw it as -- as another
15 black Honda, and then at some point in the course of,
16 you know, observing these traffic violations, perhaps,
17 he -- he connected that this was the Honda from that
18 email.
19 THE COURT: So, when -- when -- when,
20 Trooper, did you make the connection that there was a
21 possibility that the --
22 THE WITNESS: Well, --
23 THE COURT: -- black Honda that you were
24 observing --
25 MR. HAMLIN: Your Honor, I just -- I

1 apologize. I just want -- I have an objection to
2 giving a speaking objection before the officer is about
3 to testify about what he may have done, because I
4 suspect if he's going to testify now, he's going to say
5 exactly what the speaking objection was.
6 THE COURT: I understand. That's called,
7 arguably, coaching a witness, which is a time honored
8 tradition amongst us attorneys, Counsel. But,
9 nevertheless, you are correct in objecting.
10 MS. MIELKE: I'll move on.
11 THE COURT: Okay.
12 MS. MIELKE: Okay.
13 BY MS. MIELKE:
14 Q Okay. So, you pull over the vehicle. At
15 what point did you actually initially smell the odor of
16 raw marijuana?
17 A Shortly after going up to the vehicle. I mean,
18 it's pretty pungent. Like I say, you know, you could
19 be following a vehicle and sometimes you get it through
20 your vents if it's -- if it's powerful enough. I mean,
21 the strains nowadays are, you know, powerful, the
22 smell.
23 Q Okay. And when you initially observed that
24 smell, was -- were there any other troopers present
25 with you at that time?

1 A Not up to the vehicle, no.
2 Q Okay. I'm just going to refer you to the
3 State's Exhibit 3. This is the video. I'm just going
4 to play a short clip here. This is the -- the initial
5 stop portion of the video.
6 THE COURT: Okay.
7 (Exhibit S-3 played at 12:07:57 p.m.)
8 TROOPER TRAVIS: (Indiscernible) black Honda
9 (indiscernible). And that's going to be a black male
10 driver, black female passenger.
11 (Indiscernible). Yeah, just try to take it
12 out for me, if you can. If not, don't worry about it.
13 (Exhibit S-3 stopped at 12:08:54 p.m.)
14 BY MS. MIELKE:
15 Q Okay. Now, at this point during the stop,
16 did you smell raw marijuana, or was it later?
17 MR. HAMLIN: Objection. That's a leading
18 question.
19 BY MS. MIELKE:
20 Q At what point -- okay. At what point during
21 this initial portion of the -- the stop and time of the
22 stop did you actually note the presence of raw
23 marijuana?
24 A Verbally or to myself?
25 Q To yourself.

1 A Right away. But you don't want to show your
2 hands, you know, your cards.
3 Q What do you mean by, "you don't want to show
4 your hands"?
5 A I mean, --
6 MR. HAMLIN: Objection, Your Honor, as to
7 that's opinion information. What does that have to do
8 with the relevance of the probable cause for the stop?
9 THE COURT: I'll -- I'll overrule the
10 objection. I'll allow him to answer it.
11 THE WITNESS: I'm not going to tip my hat and
12 tell the driver right away that I smell raw marijuana,
13 because he could, you know, get rid of the evidence
14 somehow or, you know, and -- and I'm observing what's
15 going on right there, too.
16 (Exhibit S-3 played at 12:09:58 p.m.)
17 TROOPER TRAVIS: Okay. Thank you. Do you
18 have your license, sir? Why don't you grab that for
19 me? (Indiscernible). Whose vehicle is this?
20 MS. BAKER: Mine.
21 TROOPER TRAVIS: Yours? Okay. All right.
22 Reason I'm stopping you, back there I was following you
23 for a little bit, all right. (Indiscernible) come off
24 the Turnpike, looks like you're having a little trouble
25 maintaining lane of travel. I just (indiscernible) not

1 falling asleep. Number two, I want to make sure you
2 weren't drinking at all.
3 MR. COHEN: (Indiscernible).
4 TROOPER TRAVIS: Where you guys going?
5 MR. COHEN: (Indiscernible).
6 TROOPER TRAVIS: Okay. Cool, cool, cool,
7 cool. (Indiscernible). No? Okay. Any of you smoke
8 cigarettes?
9 (Exhibit S-3 stopped at 12:10:57 p.m.)
10 BY MS. MIELKE:
11 Q And why were you asking, it was either the
12 defendant or the female in the car, why they smoked
13 cigarette -- or if they smoked cigarettes?
14 MR. HAMLIN: I have an objection to that as
15 well, Your Honor, because is it relevant as to why it
16 was and whether or not there was probable cause for the
17 stop.
18 MS. MIELKE: It is --
19 MR. HAMLIN: What difference does it make?
20 MS. MIELKE: -- relevant, Your Honor, because
21 at this point in time his testimony is that he smells
22 marijuana. The questions that are posed to the driver
23 and the passenger are -- relate to his thought process
24 during the course of this stop.
25 THE COURT: Okay. What do you have to say in

1 response to that?
2 MR. HAMLIN: Generally, Your Honor, when --
3 when questions are asked why you did something, that --
4 that doesn't go to the issue of whether or not there's
5 probable cause, except if it's probable cause for the
6 initial observation and the stop.
7 In this instance, she's asking a question
8 about cigarettes. What difference does it make? What
9 does that have to do with probable cause for the stop?
10 THE COURT: It might have a difference. I
11 don't know. So, I'm going to overrule the objection.
12 BY MS. MIELKE:
13 Q Trooper, why did you pose that question to
14 the driver and/or the passenger of the vehicle?
15 A To rule out anything related to cigarettes. The
16 ashtray, you know, the -- the shake on the beard.
17 (Exhibit S-3 played at 12:12:23 p.m.)
18 TROOPER TRAVIS: (Indiscernible). Okay. All
19 right. Put those away for me, all right? All right.
20 Just do me a favor; stay in the vehicle. I'll be right
21 back. Okay?
22 I got the odor of raw marijuana
23 (indiscernible).
24 (Exhibit S-3 stopped at 12:12:38 p.m.)
25 BY MS. MIELKE:

1 Q And why were you now advising Trooper Brennan
2 about the smell of raw marijuana?
3 A Because she's my backup trooper, and I -- I like
4 to keep everybody informed at what's going on. And
5 she, you know, obviously I'm going to be pulling them
6 out of the vehicle, so.
7 Q Okay. And at some point in time, did you --
8 THE COURT: Could you -- could you just play
9 that back again?
10 MS. MIELKE: Oh sure.
11 THE COURT: Just the comment. Just that last
12 comment to Trooper Brennan.
13 MS. MIELKE: Might be a little far; I'm
14 sorry.
15 (Exhibit S-3 played at 12:13:11 p.m.)
16 TROOPER TRAVIS: Any of you smoke cigarettes?
17 You smoke cigarettes (indiscernible)? (Indiscernible).
18 Okay. All right. Put those away for me, all right?
19 All right. Just do me a favor; stay in the vehicle.
20 I'll be right back. Okay?
21 I got the odor of raw marijuana
22 (indiscernible). I'm going to update real quick.
23 TROOPER BRENNAN: Okay.
24 TROOPER TRAVIS: (Indiscernible). Okay?
25 TROOPER BRENNAN: Take the driver out?

1 (Exhibit S-3 stopped at 12:13:33 p.m.)
2 THE COURT: I couldn't understand what was --
3 what was exactly said. Do you -- do you know?
4 THE WITNESS: Yes. I -- I was --
5 THE COURT: What did you say?
6 THE WITNESS: I was indicating to her, I'm
7 going to update our status before pulling the driver
8 out.
9 THE COURT: No. What did you exactly say to
10 Trooper Brennan?
11 THE WITNESS: I'm going to update real quick.
12 THE COURT: Oh, that was it?
13 THE WITNESS: Yes.
14 THE COURT: There was nothing about marijuana
15 that was said there?
16 THE WITNESS: Raw marijuana. I said I -- I
17 -- I said -- I indicated raw marijuana to her.
18 THE COURT: Okay.
19 THE WITNESS: That I smelled raw marijuana.
20 THE COURT: All right. Very good.
21 MS. MIELKE:
22 Q Okay. Now, you -- you testified as well that
23 you advised the defendant that you smelled marijuana in
24 the vehicle.
25 A Yes.

1 Q Is that right? Okay.
2 (Extended pause)
3 (Exhibit S-3 played at 12:14:29 p.m.)
4 TROOPER TRAVIS: (Indiscernible). Whose car
5 is this? Hers or yours?
6 MR. COHEN: Hers.
7 TROOPER TRAVIS: Okay. I'm just going to --
8 what's going to happen is I'm going to search the
9 vehicle, okay? (Indiscernible) because I do smell the
10 odor of raw marijuana. If we don't find any marijuana,
11 (indiscernible), okay? All right?
12 (Exhibit S-3 stopped at 12:14:56 p.m.)
13 BY MS. MIELKE:
14 Q Okay. And do you recall at this point in the
15 course of the stop when you advised the defendant that
16 you were going to search the vehicle for marijuana? Is
17 that right?
18 A Yes.
19 Q Okay. Now, at some point during the course
20 of the stop and search, there were other officers who
21 assisted in the -- in the search in particular. Is
22 that right?
23 A Yes.
24 Q And who were those other officers?
25 A I could name --

1 Q Do you recall their names?
2 A You know, I -- I know a few of them that were --
3 you know, I know Detective Czech was out there possibly
4 a little later. They would be indicated on the report
5 or --
6 Q And -- okay. And what did you communicate to
7 those officers once they arrived to the scene in terms
8 of the search of the vehicle?
9 A That I would be conducting -- that I'm searching
10 the vehicle for, you know, I had the odor of raw
11 marijuana.
12 Q Okay. And do you recall if any of those
13 officers confirmed that they were also smelling raw
14 marijuana?
15 A I thought --
16 MR. HAMLIN: Objection to the leading
17 question.
18 BY MS. MIELKE:
19 Q What was the officers' response?
20 MR. HAMLIN: Objection. Calls for hearsay.
21 THE COURT: Sustained.
22 BY MS. MIELKE:
23 Q I'm going to refer you to the video.
24 (Extended pause)
25 THE COURT: I'm sorry, Counsel. What -- what

1 was the question you asked?
2 MS. MIELKE: The -- the question -- sorry; I
3 just lost my train of thought.
4 THE COURT: That's all right.
5 MS. MIELKE: I don't recall.
6 THE COURT: Okay. Very well. Do you want to
7 ask another question?
8 MS. MIELKE: Yeah. I'm just going to refer
9 him to the video.
10 THE COURT: What was the subject-matter of
11 this again?
12 MS. MIELKE: This was the other officers
13 present at the scene assisting in the invest -- in the
14 search.
15 THE COURT: And why were you questioning him
16 about this?
17 MS. MIELKE: During the course of his cross,
18 he indicated that he wasn't familiar with or recalled
19 any other officers' response to the -- the reason for
20 the search.
21 MR. HAMLIN: Didn't we see that? Isn't --
22 isn't it in evidence already?
23 THE COURT: It -- it might be. But if that
24 was on the cross. I -- I remember that -- that --
25 those questions on cross, so.

1 (Exhibit S-3 played at 12:18:10 p.m.)
2 TROOPER TRAVIS: (Indiscernible) can you just
3 (indiscernible). I just -- I -- I -- I know --
4 (Exhibit S-3 stopped at 12:18:15 p.m.)
5 THE COURT: So, -- so, we don't have to play
6 anything. So, was -- was your question just, do you --
7 does this witness recall any of the troopers confirming
8 the smell of marijuana?
9 MS. MIELKE: Exactly. Right.
10 THE COURT: And do you have an objection to
11 that question?
12 MR. HAMLIN: Other than what I said earlier,
13 no, Your Honor.
14 THE COURT: All right. Trooper, do you have
15 any recollection of any troopers confirming the smell
16 of marijuana?
17 THE WITNESS: I thought maybe one of them did
18 when I told them the reason for the -- the search. I
19 thought it was right on tape.
20 THE COURT: Do you know which one?
21 THE WITNESS: Which tape it was, or which
22 officer?
23 THE COURT: No, which officer.
24 THE WITNESS: Which trooper. No, I don't.
25 BY MS. MIELKE:

1 Q Would the video assist in recalling what
2 occurred?
3 A It -- it would, yes.
4 MR. HAMLIN: Can I just make an observation?
5 THE COURT: Yeah, sure.
6 MR. HAMLIN: If it's on the video, Your
7 Honor, if I'm not mistaken, has already admitted it
8 into evidence. Your Honor can see the video. If it's
9 there, it's there. If it's --
10 MS. MIELKE: Right.
11 MR. HAMLIN: -- not there, it's not there.
12 MS. MIELKE: And I should be able to use the
13 video to address his redirect, because it's already in
14 evidence.
15 MR. HAMLIN: Okay. He's -- he's just
16 testified that he thinks that's what it says. If it
17 says that, it says that.
18 MS. MIELKE: To clarify.
19 THE COURT: All right.
20 MR. HAMLIN: That's fine.
21 THE COURT: She's entitled to --
22 MR. HAMLIN: Okay.
23 THE COURT: -- use the video, like you were
24 entitled on the cross-examination to use the video.
25 MR. HAMLIN: Yeah, yeah, no.

1 MS. MIELKE: And to use any of the exhibits
2 for that matter.
3 MR. HAMLIN: We have been here till this
4 afternoon, so. It's fine.
5 (Exhibit S-3 played at 12:19:52 p.m.)
6 TROOPER TRAVIS: Yeah. Okay.
7 (Indiscernible) search glove compartment. I just -- I
8 mean, I have odor of raw marijuana.
9 UNIDENTIFIED SPEAKER: (Indiscernible)
10 TROOPER TRAVIS: Yeah. And he said he smoked
11 cigarettes. I found a (indiscernible)
12 (Exhibit S-3 stopped at 12:20:05 p.m.)
13 BY MS. MIELKE:
14 Q Okay. Now, seeing this portion of the video,
15 does this refresh your recollection as to perhaps what
16 other officers observed when they encountered the
17 vehicle?
18 A Yes. Indicated that he does smell it.
19 Q Okay.
20 A I mean, that's -- that's -- it's low, but.
21 THE COURT: Who is this trooper?
22 THE WITNESS: He's just another investigator
23 that was -- I -- I'm guessing, I'm assuming, part of
24 the initial --
25 THE COURT: Do you know who it is?

1 THE WITNESS: No, not offhand I don't, sir.
2 THE COURT: And what are you saying he -- was
3 said on the --
4 THE WITNESS: I was telling him why I was
5 searching, "You know, hey, I -- I got the odor of raw
6 marijuana."
7 THE COURT: Okay. So, what -- what -- what
8 is -- what's the -- what -- at what point in the video
9 are we? Where are we?
10 MS. MIELKE: We are just at the start of the
11 search.
12 THE COURT: So, this is?
13 MS. MIELKE: Towards the beginning of the
14 search itself.
15 THE COURT: Okay. So, the time period that's
16 on January 17th, that time -- the time period,
17 22:18:34, that's an accurate time period; right?
18 Trooper?
19 THE WITNESS: Yes. Supposed to be, yes.
20 THE COURT: Okay. So, at 22 -- at
21 approximately 22:18:34, is the part of the video that
22 you believe stands for another trooper confirming the
23 smell of marijuana. Is that correct?
24 THE WITNESS: I'm sorry. I didn't know that
25 question was for me. Yes.

1 THE COURT: Yeah. Okay.
2 THE WITNESS: Sorry. Sorry, sir.
3 THE COURT: That's okay. Okay. So, I'm just
4 making a note; 22:18:34 is the part of the video where
5 another unidentified trooper confirms smell of
6 marijuana, according to what you and the State are
7 saying. Okay. Very good.
8 BY MS. MIELKE:
9 Q Okay. And, Trooper, in your training and
10 experience, is there any reason why you might smell
11 marijuana inside a vehicle but not ultimately discover
12 it in the course of a search?
13 A The smell lingers.
14 MR. HAMLIN: Objection, Your Honor. Calls
15 for speculation. How is that --
16 MS. MIELKE: No. He's -- this is in the
17 course of his training. He's dealt with these issues
18 before.
19 THE COURT: Okay. I'll over -- I'll -- I'll
20 overrule the objection. What's your answer to that
21 question?
22 THE WITNESS: The smell -- the smell lingers.
23 Ask the question again. I just want to make sure I
24 answered correctly.
25 BY MS. MIELKE:

1 Q Okay. In the course of your training and
2 your experience, what types of reasons would there be,
3 if any, when you would smell marijuana inside a
4 vehicle, search the vehicle, but then never discover
5 any marijuana?
6 A Okay. Yeah, I mean, the smell lingers in -- in --
7 in -- in the -- in the motor vehicle. It's almost
8 like, my example that I use is a shoe box, have
9 marijuana in there, you take it out, you close the shoe
10 box, then you open it, it still smells like marijuana.
11 It could have had a trap in the car that I
12 didn't discovery because I'm not, you know, I -- I
13 don't know, you know, traps and I'm not familiar with
14 that. But you would still smell it.
15 Could have been in the air filter, you know,
16 coming through, and I didn't find it. I mean, I've
17 searched many vehicles and not find marijuana.
18 (Extended pause)
19 MS. MIELKE: That's all from the State,
20 Judge.
21 THE COURT: Okay. Are you going to have
22 redirect -- re --
23 MR. HAMLIN: Just one question.
24 THE COURT: All right.
25 RECROSS EXAMINATION BY MR. HAMLIN:

1 Q In your report, I noticed that you didn't
2 indicate in any way that the smell of marijuana was
3 present in the car. In your car.
4 A I said, "I explained the reason for the stop to
5 the driver. After speaking with the driver for a short
6 period of time, I detected the odor of raw marijuana
7 emanating from the interior of the vehicle."
8 Q His vehicle. That's what you said; right?
9 A Interior of the vehicle.
10 Q But not the police vehicle. Right?
11 A Is that what you're asking me? If I got it from
12 in my car?
13 Q You didn't smell marijuana in your car.
14 A Correct.
15 Q Okay.
16 MR. HAMLIN: Nothing further.
17 THE COURT: At any time did you smell
18 marijuana in your vehicle?
19 THE WITNESS: In my vehicle?
20 THE COURT: Yeah.
21 THE WITNESS: In my troop car?
22 THE COURT: Yeah.
23 THE WITNESS: No.
24 THE COURT: Okay. All right.
25 BY THE COURT:

1 Q If I could just ask, just I had a couple --
2 but I think -- so, -- so, there were two summonses
3 issued for the --
4 A Yes, sir.
5 Q -- failure to pay toll and was the other one
6 for --
7 A For --
8 Q -- careless driving, or what was it for?
9 A Failure to maintain lane of travel.
10 Q What's -- what's the -- what's the -- is it
11 Title 39 you went under, or --
12 A Yeah, that one was Title 39.
13 Q What was the -- what was the citation?
14 A 39:4-88(b).
15 Q 4-88(b). Okay. Now, with -- as I understand
16 it as far as the statement that's in -- the statement
17 that's in dispute that I have to decide that's
18 admissible is the statement of the -- of the defendant
19 saying something to the effect of, "Leave her alone.
20 She didn't know about it."
21 MR. HAMLIN: Yes.
22 THE COURT: Is that right? Okay.
23 BY THE COURT:
24 Q When was that statement -- do you know what
25 statement I'm -- I'm -- I'm referring to?

1 A Yes.
2 Q And when -- when was that statement made?
3 A After we found -- after I found the guns in the --
4 in the engine compartment, I came back and -- and asked
5 him --
6 Q Okay. So, it was after you had found the
7 guns?
8 A And asked him if he knew anything about it.
9 Q Had he been read his Miranda rights --
10 A Correct.
11 Q -- at that point in time?
12 A Yes.
13 Q Now, you had mentioned that you read -- if
14 the -- if I recall, you had mentioned you had read the
15 -- what was on your card. Is -- is -- is that --
16 A Yes. We're issued --
17 Q What actual rights did you read to him?
18 A Miranda warnings.
19 Q Which ones?
20 A This card, sir.
21 Q On the card? And so, can you -- can you --
22 would you have read it verbatim from that card?
23 A Yes.
24 Q All right. So, we could either enter that
25 card into evidence, but you keep it, or can you just

1 read what you --

2 A We have piles and piles of them at the station. I
3 always keep one in my breast pocket so I have it.

4 Q You just want to read what rights you would
5 have read to him?

6 A Yep. "You have the right to remain silent, refuse
7 to answer any questions. Anything you say may be used
8 against you in a court of law. You have the right to
9 consult an attorney, have him present, before, during
10 questioning. If you cannot afford an attorney, one
11 will be provided, so desire, prior to any questioning.
12 A decision to waive these rights is not final, and you
13 may withdraw your waiver whenever you -- whenever you
14 wish, either before or during questioning."

15 Q Okay. All right. Very good. Now, Trooper,
16 what's the -- based on your training and experience,
17 how does -- how do you distinguish between the smell of
18 raw marijuana versus the smell of burnt marijuana?

19 A Well, burnt you can -- you can definitely smell it
20 burnt. It has a different odor. Raw, I -- I -- I
21 describe as -- as almost like a skunky, overly skunky
22 smell to it.

23 Q And what training have you been given to
24 identify the smell of raw marijuana?

25 A We smell it in the academy, and we also burn it in

1 the academy in -- in a huge room. They walk by, they
2 -- you know, anything confiscated they have in a
3 basket, and they burn it for you, and you smell it.
4 You know.

5 Q Okay. And how many -- in your years of
6 experience of being on the road then, how many times
7 have you been involved where you smelled and then had
8 confirmation that there was raw marijuana?

9 A Exactly number? I --

10 Q Yes.

11 A I couldn't put a picture -- a number on it, but --

12 Q More than ten?

13 A -- well -- well over 50.

14 Q Well over --

15 A Especially being on the Turnpike, you know, I've
16 -- I've seen caches of marijuana.

17 Q Okay. And are you -- do you have -- are you
18 aware of the distinction as to the scope of the search
19 that can be conducted between whether there's a smell
20 of burnt marijuana as opposed to raw marijuana?

21 A Yes, sir.

22 Q And what is your understanding?

23 A Burnt, you have the passenger compartment only,
24 and the occupants within, and the bags within, and any
25 place you can actually put the burnt marijuana. If

1 it's like a rolled up cigarette, you can, you know, in
2 the vent, you can, you know, you can but -- anywhere
3 within the -- in the passenger that -- that marijuana
4 can go into, or somebody could stuff it into, or place
5 it into.

6 Raw marijuana, you have from -- you have the
7 passenger compartment. And obviously, if nothing is
8 found in the passenger compartment and it still
9 lingers, then you have the engine and the trunk,
10 because you can -- you can hide it.

11 Q All right. And so, -- and then, if I'm -- I
12 just want to make sure I understand your testimony
13 correctly. You're saying that the State Police
14 protocol is that if you have -- if you smell, I believe
15 it's either burnt or raw marijuana, it is acceptable
16 for you to remove the -- the occupants from the vehicle
17 and place them in cuffs as you conduct your search?

18 A Yes, sir.

19 Q All right.

20 THE COURT: Okay. That's all I have. Do any
21 of you have any questions you want to ask in response?

22 MR. HAMLIN: Well, just not really in
23 response to that, but is there some document we can get
24 to support that?

25 THE COURT: Protocol?

1 MR. HAMLIN: Yeah.

2 THE COURT: I'll leave that up to the State.

3 MR. HAMLIN: Your Honor, there -- there is
4 another issue that may require more testimony. It may
5 not.

6 THE COURT: Okay. Hold on. Let's see what
7 the State's -- you're done -- we're done with this
8 witness?

9 MS. MIELKE: Yes. Yes.

10 THE COURT: Very good. Trooper, you could
11 step down. Thank you very much.

12 THE WITNESS: Thank you, sir. Thank you for
13 your time.

14 THE COURT: I'm glad to see you're feeling
15 better.

16 THE WITNESS: Thank you, yeah. Take it slow
17 to my house. Do you guys need -- is this okay if I
18 leave this here?

19 MR. HAMLIN: Yeah, you can leave it there.

20 THE WITNESS: All right.

21 THE COURT: State, do you have anything
22 further?

23 MS. MIELKE: I have nothing further.

24 THE COURT: Okay.

25 MR. HAMLIN: Your Honor, there was --

1 obviously, there was another trooper that was present,
2 Trooper Brennan. And I had requested the DIVR from
3 Trooper Brennan the last -- in December when we were
4 here. And Counsel was trying to get it. She got a
5 copy of it. I don't know if she -- there was some
6 issues with her opening it. I don't know if she's been
7 able to open it since.

8 I wanted to see that, because I initially
9 thought that Trooper Brennan was with Trooper Travis in
10 the same car, because they come at the same time.

11 So, I don't know where it stands at the
12 moment, but I -- I -- I did want to see that before
13 determining whether or not she should testify.

14 THE COURT: Whether you would call her?

15 MR. HAMLIN: Yes.

16 THE COURT: What's the status?

17 MR. HAMLIN: And -- and I couldn't have done
18 it before, because I don't have it.

19 THE COURT: Right. What's the status?

20 MS. MIELKE: Your Honor, I -- I have just
21 recently obtained the video, however, I haven't been
22 able to open it myself. I have been in fairly
23 extensive contact with our in-house IT Department, as
24 well as the State Police IT Department. And for
25 whatever reason, nobody can -- no one can figure out

1 how to open up and make this video play.

2 So, I have yet to see the video myself.
3 However, my position on this would be that the video
4 provided through Trooper Travis shows the stop, the --
5 the entirety of the search. You can hear, although the
6 -- the quality of the audio is not great, discussions
7 between the officers as well as with the defendant.
8 And for the purpose of this motion itself, really the
9 -- this particular DIVR should suffice. For trial, I
10 understand --

11 THE COURT: Well, not for the defense.

12 MR. HAMLIN: Right. I understand that --

13 THE COURT: Defense might -- it might lead to
14 some relevant evidence, and it's a very loose standard
15 we should have for an exchange of discovery.

16 MR. HAMLIN: And my only -- my -- my response
17 to that is that I'd like to see it. Maybe it wouldn't
18 change anything, but I certainly would like to see it
19 before making that determination.

20 THE COURT: Okay. All right. Very good.
21 Let me -- okay. Then let's just discuss that
22 informally. We can discuss that in chambers. And, Mr.
23 Cohen, it's lunchtime now, so if you could just wait
24 outside? We'll clear the courtroom. And, Counsel, I
25 could just see you in chambers.

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MR. HAMLIN: That's fine.
(The Court/clerk discussion)
THE COURT: Come on back.
(Proceeding adjourned at 12:33 p.m.)

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CERTIFICATION

I, MEGAN LASH, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 10:25:04 to 11:00:17, 11:00:34 to 11:50:12, and 12:01:19 to 12:33:22, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Megan Lash
Megan Lash

596
AOC Number

KLJ Transcription Service
Agency Name

07/22/22
Date

FILED, Clerk of the Supreme Court, 06 Sep 2022, 084493

BY ORDER OF THE COURT

State of New Jersey,	:	SUPERIOR COURT OF NEW JERSEY
	:	COUNTY OF MIDDLESEX
Plaintiff	:	LAW DIVISION
	:	
v.	:	CRIMINAL ACTION
	:	
Cornelius Cohen,	:	Ind. No. 16-10-00162-S
	:	Pros. No.: 16-000180
Defendant.	:	
_____	:	

FILED
JUN 20 2018
Benjamin S. Bucca, Jr., J.S.C.

ORDER

THIS MATTER having been brought before the Court by Ray Hamlin, Esq., appearing on behalf of defendant, Cornelius Cohen; and Deputy Attorney General Sarah Mielke, Esq., appearing on behalf of the State; and the Court having reviewed all papers submitted, all evidence presented and having heard oral argument; and for good cause shown;

IT IS ON THIS 19TH DAY OF JUNE, 2018,

ORDERED that the Defendant’s Motion to Suppress Evidence, Motion to Suppress the Defendant’s Statement and Motion to Reveal the Confidential Informant are hereby **DENIED** for the reasons set forth in the attached opinion.

Hon. Ben Bucca, Jr. J.S.C..

- [X] Defense Brief
- [X] Defense Responsive Brief
- [X] State Brief
- [X] State Responsive Brief

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SUPERIOR COURT OF NEW JERSEY
MIDDLESEX VICINAGEBenjamin S. Bucca, Jr.
Judge of the Superior CourtPhone: 732-645-4300
Fax: 732-645-4304Middlesex County Courthouse
56 Paterson Street – 5th Floor
New Brunswick, NJ 08903-0964

June 19, 2018

DAG Sarah M. Mielke
25 Market Street
P.O. Box 94
Trenton, NJ 08625Raymond L. Hamlin
Hunt Hamlin & Ridley
60 Park Place, 16th Floor
Newark, NJ 07102**RE: State of New Jersey v. Cornelius Cohen**
Indictment No. 16-10-00162-S

Counselors:

On or about October 17, 2016, a State Grand Jury returned Indictment 16-10-00162-S, charging Cornelius Cohen, (hereinafter “Defendant”), with one count of second-degree Unlawful Possession of a Weapon, contrary to N.J.S.A. 2C:39-5(b), one count of third-degree Unlawful Possession of a Weapon, contrary to N.J.S.A. 2C:39-5c(1) and one count of fourth-degree Possession of a Prohibited Device, contrary to N.J.S.A. 2C:39-3f. Subsequently, the Defendant filed a Motion to Suppress Evidence, a Motion to Suppress the Defendant’s Statement and a Motion to Reveal the Confidential Informant.

I. Facts

In January of 2016, a confidential source notified detectives with the New Jersey State Police the Defendant was involved in weapons sales in Essex and Middlesex Counties. The confidential informant stated the Defendant traveled outside of New Jersey to obtain weapons and then returned to New Jersey to sell them. The confidential source informed detectives the Defendant used two different vehicles to transport the weapons. One vehicle was the Defendant’s own vehicle. The other vehicle was a black Honda Civic with New Jersey registration number Z50EYH and registered to Nazsa Baker.

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On January 15, 2016, the confidential source informed detectives the Defendant was traveling to North Carolina on the weekend of January 16, 2016. Based on this information, detectives notified all New Jersey State Police stations of the Defendant's vehicle descriptions and began conducting surveillance in an attempt to locate the Defendant.

On January 17, 2016 Trooper Chuck Travis observed a black Honda Civic, registration number Z50EYH, traveling on the New Jersey Turnpike in Woodbridge Township. Trooper Travis allegedly observed the vehicle failing to maintain its lane of travel. Trooper Travis recognized the vehicle as the Defendant's and began to follow the vehicle in order to find a safe place to stop the vehicle. While following the vehicle, Trooper Travis allegedly observed the vehicle drive through the EZ Pass lane where the toll reader indicated no toll was paid. The vehicle continued onto the Garden State Parkway and Trooper Travis conducted a traffic stop close to milepost 137.

Trooper Travis walked to the passenger side window of the vehicle and observed the Defendant and Nazsa Baker in the vehicle. Trooper Travis requested the Defendant's license, insurance and registration. While awaiting the Defendant's documents, Trooper Travis allegedly smelled the odor of raw marijuana. With the help of the backup officer, both the Defendant and Nazsa Baker were put in handcuffs and placed in separate police cars.

In response to the odor of raw marijuana, Trooper Travis conducted a search of the vehicle. Inside the glove compartment, Trooper Travis discovered a plastic bag containing two shot glasses, one of which contained a spent 9mm shell casing. At this point, additional back up arrived on scene and several officers began searching the vehicle. Trooper Travis then searched the hood of the vehicle, where he found two firearms in separate bags. In the trunk, six .38 caliber hollow point bullets were found inside a black bag.

II. Motion to Suppress Evidence

The Defendant seeks to suppress the evidence found during the search of his vehicle. The Defendant asserts the motor vehicle stop was a preplanned stop based on a tip received from a confidential informant. The confidential source told detectives the Defendant was allegedly trafficking weapons and would be traveling from North Carolina to New Jersey with weapons during the weekend of January 16, 2016. The Defendant asserts that since Trooper Travis received a notice about the Defendant prior to stopping the Defendant for an alleged traffic violation the stop was pre-planned and could not have occurred as a result of unforeseeable and spontaneous events. As a result, the Defendant asserts there was ample time to secure a warrant before conducting the search of the vehicle.

In response, the State argues Trooper Travis stopped the Defendant's vehicle after observing the Defendant failing to maintain his lane of traffic and failing to pay the toll when driving through an EZ Pass lane. The State asserts when Trooper Travis pulled over the Defendant and walked up to the passenger side window he instantly smelled the odor of raw marijuana. Trooper Travis also alleged there were multiple air fresheners. Through his training and experience, Trooper Travis asserts multiple air fresheners is an indicator of marijuana.

The State asserts Trooper Travis' detection of raw marijuana was unforeseen and spontaneous, as he had no belief marijuana was in the vehicle prior to the stop. Additionally, the State asserts the detection of raw marijuana was probable cause to believe contraband was in the vehicle, thus justifying the warrantless search of the entire vehicle.

Lastly, the State asserts Trooper Travis' prior notice of the Defendant possibly transporting weapons is ancillary because the search of the vehicle is valid regardless of the information from the confidential informant. The motor vehicle stop here was a result of a motor vehicle violation. The search here stemmed from the unforeseeable and spontaneous detection of raw marijuana, not from the notice involving potential weapon trafficking.

a. Applicable Law

There are three areas of law that this Court will apply in its analysis: 1) the automobile exception, 2) the impact of the smell of raw marijuana, and 3) independent corroboration of a confidential informant's tip.

Where no warrant was sought for the search and arrest of a defendant, the State bears the burden of showing that the warrantless seizure falls within one of the few well-delineated exceptions to the warrant requirement. The State has the burden of proof to demonstrate by a preponderance of the evidence that the warrantless seizure was valid. State v. O'Neal, 190 N.J. 601, 606 (2007).

"A lawful stop of an automobile must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed." State v. Carty, 170 N.J. 632, 639-640 *citing Delaware v. Prouse*, 440 U.S. 648, 663 (1979). The "reasonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest." State v. Stovall, 170 N.J. 364, 356 (2002). There must be a "minimal level of objective justification for making the stop." State v. Nishina, 175 N.J. 502, 511 (2003) *quoting United States v. Sokolow*, 490 U.S. 1, 7 (1989).

"It is firmly established that a police officer is justified in stopping a motor vehicle when he has an articulable and reasonable suspicion that the driver committed a motor vehicle offense." State v. Smith, 306 N.J. Super. 370, 380 (App. Div. 1997) *citing Delaware v. Prouse*, 440 U.S. 648, 663 (1979). An investigatory stop is valid only if the officer has a "particularized suspicion" based upon an objective observation that the person stopped has been engaged or is about to engage in criminal wrongdoing. The "articulable reasons" or "particularized suspicion" of criminal activity must be based upon the law enforcement officer's assessment of the totality of circumstances with which he is faced. Such observations are those that, in view of the officer's experience and knowledge, taken together with rational inferences drawn from those facts, reasonably warrant the limited intrusion upon the individual's freedom. State v. Nishina, 175 N.J. 502, 511 (2003) *citing State v. Davis*, 1004 N.J. 490, 504 (1986).

The automobile exception holds a search warrant unnecessary when the police stop an automobile on the highway and have probable cause to believe that it contains contraband or evidence of a crime. State v. Witt, 223 N.J. 409, 450 (2015); State v. Alston, 88 N.J. 211, 231

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(1981). “The primary rationale for this exception lies in the exigent circumstances created by the inherent mobility of vehicles that often makes it impracticable to obtain a warrant.” Id. “These exigent circumstances do not dissipate simply because the particular occupants of the vehicle may have been removed from the car, arrested, or otherwise restricted in their freedom of movement.” Id. at 234 *citing* State v. Waltz, 61 N.J. 83; State v. Session, 172 N.J. Super. 558 at 566; State v. Kahlon, 172 N.J. Super. 331, 340 (app. Div. 1980).

Law enforcement’s inability to pinpoint the source of the smell of raw marijuana while in the area of an automobile can establish by itself probable cause to search the entire vehicle. State v. Kahlon, 172 N.J. Super. 331, 338 (App. Div. 1980).

The scope of a warrantless search is defined by the object of the search and the places in which there is probable cause to believe that it may be found. State v. Esteves, 93 N.J. 498 (1983); United States v. Ross, 456 U.S. 798, 799, (1982).

To justify action based on an anonymous tip, the police must verify that the tip is reliable by some independent corroborative effort in order to conduct a search or effectuate an arrest. Generally, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable. Stated differently, courts find no constitutional violation when there is independent corroboration by the police of significant aspects of the informer's predictions. The analysis in any given case turns ultimately on the totality of the circumstances. State v. Golotta, 178 N.J. 205, 209 (2003).

The veracity of an informant’s tip, who has not previously been deemed reliable, can be bolstered by observations of the police during an investigation. It is well settled that the observations of police during an investigation may be used to bolster the veracity of an informant’s information offered to establish probable cause to obtain a search warrant as well as observations may be similarly used to establish probable cause to conduct a warrantless search, even when the informant had not been previously deemed reliable. State v. Probasco, 220 N.J. Super. 355 at 358-359.

In State v. Foreshaw, the Court ruled the police properly relied on an informant’s tip that was not previously deemed reliable in establishing probable cause to conduct a search. State v. Foreshaw, 245 N.J. Super. 166 at 176-177. In Foreshaw, the informant provided police with detailed information about the defendants’ vehicle. Id. at 177. The police subsequently confirmed the information was correct, down to the smallest of details. Id. The informant correctly indicated the defendants drove a silver-gray Eldorado with a spare tire mount and New Jersey license plates. Id. Additionally, the suspect left the Turnpike at the exit described by the informant and headed in the direction predicted by the informant. Id. These facts, coupled with the police officers’ years of training and experience and their investigation of the matter, were sufficient to establish probable cause. Id.

The proper inquiry for determining the constitutionality of a search and seizure is whether the conduct of the law enforcement officer who undertook the search was objectively reasonable, without regard to his or her underlying motives or intent. State v. Kennedy, 247 N.J. Super. 21,

27 (App. Div. 1991). It has been said that the courts will not inquire into the motivation of a police officer whose stop of an automobile is based upon a traffic violation committed in his presence. Id. at 28.

b. Court's Finding

In viewing the MVR of the stop and search of the Defendant's vehicle and observing Trooper Travis during testimony, this Court finds Trooper Travis to be credible. At 22:02 of the MVR, Trooper Travis explains to the Defendant he has been stopped for failure to maintain his lane of traffic. Trooper Travis informs the Defendant he thought the Defendant may have been falling asleep or driving while intoxicated. Additionally, Trooper Travis goes into detail as to why he pulled over the Defendant during his testimony on December 20, 2017, stating based on his training and experience, the Defendant's driving behavior indicated possible intoxication. (T97:2-25). Although there is no independent corroboration of the Defendant's driving infraction, this Court finds Trooper Travis to be credible. His observations of the Defendant's driving provided him with an "articulable and reasonable suspicion that the driver committed a motor vehicle offense." State v. Smith, 306 N.J. Super. 370, 380 (App. Div. 1997).

Trooper Travis also testified he observed the Defendant drive through the EZ Pass lane without paying the toll. Specifically, when the Defendant drove through the EZ Pass lane, the toll sign indicated "No Toll Paid." To contradict this observation, the Defendant provided the Court with Nazsa Baker's EZ Pass records and argued the toll was paid. Based on the Court's review and interpretation of the records, it appears Nazsa Baker's EZ Pass account had a negative balance on January 17, 2016. The records also indicate the toll charged on January 17, 2016 was not actually recorded as paid until January 21, 2016, two days after a prepaid payment of \$50.00 posted to the account. Although there is no evidence to prove what the toll sign read when the Defendant drove through the EZ Pass lane on January 17, 2016, this Court's interpretation of Nazsa Baker's EZ Pass records suggest that on January 17, 2016 Nazsa Baker had a negative balance on her account.

On January 19, 2016 a payment was made on her account and the toll charge for January 17, 2016 was not recorded as paid until January 21, 2016. Thus the Defendant's efforts to impeach the credibility of Trooper Travis with the EZ-Pass records is misplaced because it appears from the record she had a negative balance on her account on January 17, 2016 and the toll was not recorded as paid until January 21, 2016. As a result of these facts, this Court finds the EZ Pass records do not support the defense argument that Trooper Travis was not truthful when he testified that a "No Toll Paid" message was displayed when the vehicle the Defendant was driving drove thru the toll at exit 11 on the New Jersey Turnpike. Rather, if anything the EZ Pass record supports the likelihood that Trooper Travis correctly observed the message that was displayed.

Finally, this Court finds Trooper Brennan's testimony ancillary to the core issues of this case. According to Trooper Brennan, she and Trooper Travis were parked next to each other on the Turnpike when Trooper Travis quickly drove off. At this time, Trooper Brennan was unaware as to why Trooper Travis unexpectedly drove off. Trooper Brennan decided to follow Trooper Travis as back up. However, Trooper Brennan had no reason to focus her attention on the vehicle pursued by Trooper Travis because she was unaware of who Trooper Travis was pursuing, or why. In addition to Trooper Brennan's lack of knowledge, she was physically unable to observe the

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Defendant's vehicle as she traveled behind Trooper Travis. As a result, Trooper Brennan was unable to provide testimony regarding the validity of the motor vehicle stop.

This Court finds the core issue of this motion to be whether the smell of raw marijuana was actually detected. As discussed above, this Court finds Trooper Travis to be credible. Trooper Travis first indicates the smell of raw marijuana at 22:05 of the MVR. At 22:06 Trooper Travis asks the Defendant and Nazsa Baker if either of them smoke medical marijuana. At 22:07 Trooper Travis removes the Defendant from the vehicle, tells him not to speak, and informs the Defendant he smells raw marijuana. Then, at 22:10, Trooper Travis tells the Defendant he has smelled raw marijuana many times and has made numerous arrests from it.

After removing the Defendant and Nazsa Baker from the vehicle, Trooper Travis begins the search of the vehicle. At this time, an unidentified detective walks up to Trooper Travis. Trooper Travis introduces himself and explains to the detective he is searching the vehicle after detecting raw marijuana. At 22:18 of the MVR, the unidentified detective confirms the smell of raw marijuana by saying, "yeah, you can really smell it." Then, at 22:36 of the MVR, Trooper Travis is unsuccessful in his search for marijuana and states quietly he doesn't know why there isn't marijuana, and maybe the Defendant had the marijuana in the car earlier. At 22:37, Trooper Travis questions the Defendant one more time about possible marijuana.

Although no marijuana was subsequently found in the vehicle when the officer claimed the smell of raw marijuana, this Court finds Trooper Travis' credibility coupled with the corroboration of the unidentified detective enough to support probable cause of the search by a preponderance of the evidence. First, as evidenced by the MVR, Trooper Travis and the unidentified detective were meeting for the first time before conducting the search. The unidentified detective's corroboration of the raw marijuana smell was unsolicited by Trooper Travis, and there is no evidence to suggest the two preplanned the conversation to support the search as a result of the notice.

This Court evaluated the issue of raw marijuana with great care, especially considering no marijuana was found in the vehicle. However, this Court finds as credible Trooper Travis's testimony that he smelled raw marijuana. The odor of raw marijuana emanating from a vehicle without a detectible pinpoint establishes probable cause to search the entire vehicle. State v. Kahlon, 172 N.J. Super. 331, 338 (App. Div. 1980).

Although Trooper Travis was made aware of the Defendant and alleged weapon trafficking prior to making the motor vehicle stop, this Court finds the stop and subsequent warrantless search were independent of the notification. Trooper Travis' motive for following the Defendant is inconsequential as the analysis of the stop is based solely on the objective facts involving the motor vehicle violations observed. Here, Trooper Travis observed the Defendant committing motor vehicle violations. When the smell of raw marijuana was detected, a warrantless search became permissible to locate the marijuana. State v. Kahlon, 172 N.J. Super. 331, 338 (App. Div. 1980).

The search of the Defendant's vehicle is further supported by the confidential informant's tip. For an anonymous tip, police must verify the tip is reliable by independent corroboration. State v. Foreshaw, 245 N.J. Super. 166 at 176-177; State v. Probasco, 220 N.J. Super. 355 at 358-359. In

this matter, Trooper Travis independently corroborated the confidential informant's tip. The confidential informant told police the Defendant would be traveling from North Carolina to New Jersey with weapons on the weekend of January 16, 2016. The confidential informant also provided police with the make, model and license plate of both the Defendant and Nazsa Baker's vehicle. On Sunday, January 17, 2016, Trooper Travis located the Defendant traveling northbound. The Defendant was driving Nazsa Baker's vehicle. The vehicle was the same make, model and license plate number as detailed by the confidential informant. Here, Trooper Travis independently corroborated the traveling details of the Defendant as provided by the confidential informant.

Then, when the Defendant's passenger side glove compartment was searched as a result of the odor of raw marijuana, Trooper Travis found a 9mm shell casing. The shell casing in the glove compartment independently corroborated the confidential informant's tip that the Defendant was trafficking weapons and specifically on the weekend of January 16, 2016. The independent corroboration of both the travel details and the weapon trafficking on the specific dates provided by the confidential informant is synonymous to the facts in State v. Probasco and State v. Foreshaw, and as in those cases, the independent corroboration of the confidential informant's information established probable cause and supported the warrantless search for weapons. The probable cause resulting from the shell casing further justifies the search of the entire vehicle for possible weapons.

As a result, this Court finds Trooper Travis had an articulable and reasonable suspicion the Defendant committed motor vehicle violations. Once the Defendant's vehicle was lawfully stopped, Trooper Travis' detection of the odor of raw marijuana emanating from the vehicle was unforeseeable and spontaneous, permitting a warrantless search of the entire vehicle. Almost immediately into the search of the vehicle's interior compartment, and thus a minor intrusion to the Defendant's expectation of privacy, Trooper Travis observed a shell casing in the interior glove compartment. The finding of a shell casing, along with other corroborated facts from the confidential informant, provided additional probable cause to search the entire vehicle for weapons. Therefore, the Defendant's Motion to Suppress Evidence is denied.

III. Motion to Suppress Defendant's Statement:

The Defendant seeks to suppress the on-scene statement made by Defendant when questioned by Trooper Travis about the weapons. The Defendant asserts he was not properly informed of his Miranda warnings prior to stating Nazsa Baker did not know about the weapons, and only the Defendant was culpable. In response, the State asserts the Defendant was provided with his Miranda warnings prior to the statement.

a. Applicable Law

Admission of a defendant's statements is governed by the principles established in Miranda v. Arizona, 384 U.S. 436 (1966) and its progeny. The warnings set forth in Miranda—the right to remain silent, the right to legal counsel, etc.—are required whenever a suspect is subjected to custodial interrogation by a law enforcement officer. Miranda, 384 U.S. at 444; State v. Williams, 59 N.J. 493 (1973). Miranda bars the admission during the state's case in

chief of any statement elicited from the defendant through custodial questioning, unless the defendant received his Miranda warnings and knowingly waived those rights prior to making the statement. Once Defendant invokes his right to remain silent his request must be scrupulously honored and the investigators must cease all questioning. See State v. Johnson, 120 N.J. 263, 281 (1990); see also State v. Mallon, 288 N.J. Super. 139, 149 (App. Div. 1996). “If the individual indicates in any manner at any time prior to or during questioning a wish to remain silent, interrogation must cease.” Miranda v. Arizona, 384 U.S. 436, 473-74 (1966); See State v. Johnson, 120 N.J. 263, 281 (1990).

A defendant is in custody where the police have formally taken him into custody or have deprived his freedom of action in any way. See State v. Brown, 352 N.J. Super. 338, 351 (App. Div. 2002). The test for whether a suspect is in custody is an objective consideration of the totality of circumstances. Id. at 352. Custody need not require a formal arrest or handcuffs, and could even occur in one’s home. Id. Some of the relevant factors a court should consider in deciding whether a suspect is in custody include “the duration of the detention, the place and time of the interrogation, the nature of the questions and the language employed by the interrogator, the conduct of the police, the status of the interrogator, the status of the suspect, and any other relevant circumstances.” Id.

In State v. Stott, the Supreme Court found a suspect was in custody where the suspect, a psychiatric patient, was isolated in a basement from other patients and questioned by four investigators concerning illegal drug activity, with his statement being recorded. State v. Stott, 171 N.J. 343, 365 (2002). Based on this, the Supreme Court held that it was clear to the patient that he was a suspect. Id. at 366. The Supreme Court concluded that a reasonable person under these circumstances would feel that his freedom of movement was restricted. Id.

For the Miranda warnings to be necessary, the questioning of a suspect in custody must amount to interrogation. Interrogation has been defined as “express questioning and any words or actions by the police that they ‘should know are reasonably likely to elicit an incriminating response from the suspect.’” State v. Bohuk, 269 N.J. Super. 581, 594 (App. Div. 1994) (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)).

For a confession to be admissible as evidence, the state must prove beyond a reasonable doubt that the suspect’s waiver was knowing, intelligent, and voluntary in light of all the circumstances. State v. Bey (II), 112 N.J. 123 (1988); see also State v. Galloway, 133 N.J. 631, 654 (1993). Thus, in determining whether a defendant has waived his or her constitutional rights, the court must examine the totality of the circumstances surrounding the interrogation. Fare v. Michael C., 442 U.S. 707 (1979).

b. Court’s Findings

To determine whether the Defendant properly received his Miranda warnings prior to his on-scene statement, this Court must determine the timeline of the motor vehicle stop. In reviewing Trooper Travis’ MVR, the Defendant is removed from the vehicle and put in handcuffs around 22:06. At 22:07, Trooper Travis warns the Defendant not to speak to protect the Defendant’s

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rights. At 22:09 Trooper Travis reads the Defendant his Miranda warnings while the Defendant is sitting in Trooper Travis' vehicle.

At 22:21 Trooper Travis finds the two guns in the hood of the vehicle. Trooper Travis then returns to the vehicle to question the Defendant about the weapons. Here, Trooper Travis asks the Defendant if there are more weapons in the vehicle and if the guns found are loaded. It is at this point the Defendant tells Trooper Travis he is the only one who knew about the weapons, exculpating Nazsa Baker.

Here, the Defendant was taken into custody when Trooper Travis removed him from the vehicle and placed him in hand cuffs. Interrogation began when Trooper Travis found the guns in the vehicle's hood and began questioning the Defendant about the weapons. It is reasonable to conclude questioning an individual about weapons found during a motor vehicle search would, "elicit an incriminating response from the suspect", constituting interrogation. Rhode Island v. Innis, 446 U.S. 291, 301 (1980). As both custody and interrogation were found in this matter, Miranda warnings were necessary.

As evident from the above discussed timeline, the Defendant received his Miranda warnings prior to Trooper Travis' questioning and prior to making the on-scene statement. The question now is whether the Defendant's waiver was knowing, intelligent, and voluntary in light of all the circumstances. State v. Bey (II), 112 N.J. 123 (1988); *see also* State v. Galloway, 133 N.J. 631, 654 (1993). Here, the evidence suggests the Defendant did waive his Miranda rights knowingly, intelligently and voluntarily when making the on-scene statement.

The first indicator the Defendant waived his Miranda rights knowingly, intelligently and voluntarily is Trooper Travis told the Defendant not to speak before he read the Defendant his rights. Trooper Travis even specifically tells the Defendant not to speak so the Defendant can protect his rights. Another indicator the Defendant waived his Miranda rights knowingly, intelligently and voluntarily is the MVR clearly recorded Trooper Travis reading the Defendant his Miranda warnings and asking the Defendant if he understood. Although it can be argued the Miranda warnings were read hurriedly, there is nothing to suggest the Defendant did not understand his rights.

As a result, this Court finds the Defendant did knowingly, intelligently and voluntarily waive his Miranda rights when making the on-scene statement. The Defendant's Motion to Suppress the Statement is hereby denied.

IV. Motion to Reveal the Confidential Informant:

The Defendant seeks to have the identity of the confidential informant revealed. The Defendant asserts the disclosure of the informant's identity will avail him of the opportunity to have a fair determination of the within matter. The Defendant asserts the failure to disclose will deny the Defendant his right to confront the informant and ascertain whether the informant could have possibly had any information on the Defendant.

In response, the State asserts the confidential informant's involvement in the matter ceased prior to the January 17, 2016 motor vehicle stop. The State asserts the confidential informant had no direct involvement in the motor vehicle stop leading to the Defendant's charges. Finally, the State asserts the Defense failed to explain how disclosure of the confidential informant is relevant or would "assure a fair determination of the issues."

a. Applicable Law

The constitutional right of criminal defendants to procure attendance of witnesses who can furnish relevant evidence for their defense is based upon both the Sixth Amendment right of defendant to have compulsory process for obtaining witnesses in his favor and on the fundamental fairness requirement embodied in due process clause of Fifth Amendment. However, N.J.R.E. 516 was precisely written to allow disclosure where such constitutional rights were implicated. U.S. v. Verkuilen, 690 F.2d 648 (1982).

The informant's privilege is not absolute. The State cannot invoke the informant's privilege when the informer is an essential witness on a basic issue in the case, when the informer is an active participant in the crime for which the defendant is on trial, when the defendant may reasonably assert defense of entrapment, or when fundamental principles of fairness to the defendant mandate disclosure. State v. Florez, 134 N.J. 570 (1994). "In determining whether the State must disclose the true identity of an informant, courts weigh and balance the competing considerations on a case-by-case basis." Id. at 579.

As case law makes clear, the defendant bears the burden of making a substantial showing of need that the informant's identity is essential to a fair determination of the issues, or a showing that the informant's testimony "would have been relevant and material to the defense;" for example, an essential witness on a material issue or an active participant in the crime. Absent a strong showing of need, courts will generally deny disclosure of the identity of the informant where the informant plays only a marginal role, such as providing information or tips to the police, while participating in the preliminary stage of a criminal investigation. Proof that the informer witnessed a criminal transaction, without more, is usually considered insufficient to justify disclosure of his identity. State v. Milligan, 71 N.J. 373 (1976).

On motion for disclosure of identity of informant, courts must examine the nature of the accused's defenses and the purpose for which the informer's testimony is sought, as well as the extent of the informer's involvement in the criminal transaction. Id. Under most circumstances, the informant's identity will be kept secret and will not be revealed for insignificant or transient reasons. State v. Foreshaw, 245 N.J. Super. 166 (App. Div.), cert. denied 126 N.J. 327 (1991).

The government has long possessed the right to withhold the identity of informants who assist law enforcement. State v. Milligan 71 N.J. 373, 380 (1976); N.J.R.E. 516. The privilege acknowledges the policy in favor of protecting the identity of informants, as they would otherwise be dismayed from assisting law enforcement if their identities would be compromised. Milligan, supra, 71 N.J. at 381. A defendant must meet a heavy burden to succeed on a motion to compel the disclosure of a confidential informant's identity. State v. Morelli, 152 N.J. Super. 67, 75 (App. Div. 1977).

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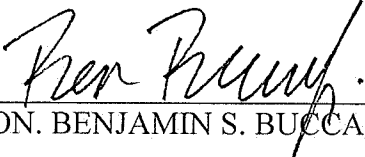
The privilege, however, is not absolute and must be balanced against a defendant's right of confrontation. The privilege is not available in instances where: (1) the identity of the CI has already been disclosed; (2) the CI is an essential witness or active participant in the crime with which the defendant is charged; (3) a defense of entrapment seems reasonably plausible; and (4) disclosure is mandated by principles of fairness to the accused. Milligan, supra, 71 N.J. at 383 (internal citations omitted).

b. Court's Findings

Here, this Court finds the Defendant has not met the burden of showing why the confidential informant's identity is essential to a fair determination of the issues, or why the informant's testimony "would have been relevant and material to the defense." State v. Milligan, 71 N.J. 373 (1976). First, there is no evidence to suggest the identity of the confidential informant has already been disclosed. Second, there is no evidence to suggest the confidential informant was an active participant in the crime with which the Defendant is charged or an essential witness. Here, the confidential informant told detectives the Defendant would be traveling from North Carolina to New Jersey the weekend of January 16, 2016 with weapons. However, there is nothing to suggest the confidential informant witnessed the actual crime or participated in it. Third, the Defendant is not claiming a defense of entrapment. Finally, there is no evidence to suggest disclosure of the confidential informant's identity is mandated by principals of fairness to the accused, as the Defendant has not made a detailed argument for such.

As a result, the Defendant's Motion to Reveal the Confidential Informant's Identity is hereby denied.

Respectfully submitted,


HON. BENJAMIN S. BUCCA, JR. J.S.C.

BSB:rl