Garden State CLE Presents:

NJ Arrest, Search & Seizure Annual Review - 2023

State v. Smart, ___ N.J. ___ (2023) 2023 WL 2394574

(Automobile exception - Unforeseen and spontaneous circumstances)

On the day of the motor vehicle stop, police investigated information received a month earlier from a confidential informant (CI) that helped link defendant Kyle Smart and a particular vehicle to narcotics trafficking in the area. After defendant entered the vehicle, police surreptitiously tracked and watched it for almost an hour, utilized information previously obtained from a concerned citizen, observed activity consistent with a narcotics transaction, then pulled him over. The parties agree the investigative stop was legal. After the driver refused consent to search the vehicle, the police action continued by calling a canine unit to conduct a dog sniff to establish probable cause. The canine performed an exterior sniff and detected the presence of drugs. Thereafter, officers immediately conducted a warrantless search.

The legal question is whether the police actions giving rise to probable cause were prompted by circumstances that were "unforeseeable and spontaneous," as required under.
State v. Witt, 223 N.J. 409 (2015) established for the automobile exception what the Court has held many times when evaluating the constitutionality of a search or seizure: Article I, Paragraph 7 of the New Jersey Constitution offers greater protection than the Fourth Amendment. For the automobile exception, that enhanced protection derives from the extra requirement that the circumstances giving rise to probable cause be "unforeseeable and spontaneous" -- in addition to the inherent mobility of the automobile stopped on a roadway. In New Jersey, both elements are necessary to justify a warrantless automobile search.

We hold that the circumstances giving rise to probable cause were not "unforeseeable and spontaneous." Those circumstances included investigating previous information from the CI and concerned citizen about defendant, the vehicle, and narcotics trafficking in the area; lengthy surveillance of defendant and the vehicle; reasonable and articulable suspicion that defendant had engaged in a drug deal; and a positive canine sniff of the vehicle.

State v. Gray, 474 N.J. Super. 216 (App. Div. 2022)

(Unannounced car door openings)

Defendant's car was subjected to a warrantless search incident to an unrelated sting operation planned and carried out by New Jersey State Police. The State Police detained defendant after a parking lot melee involving three other persons, including the target of the sting operation. Due to the cold weather, state troopers detained defendant in his car. After a state trooper opened defendant's car door and placed him inside, the trooper smelled the odor of marijuana. Based on the trooper's detection of marijuana, the State Police sought defendant's consent to search the car. After initially refusing, defendant consented, and the State Police conducted a search of the car. The State Police found no marijuana in the car, but they recovered an illegal gun. Defendant filed a motion to suppress the gun, arguing the initial entry into his vehicle constituted an unconstitutional search. The trial court denied the motion, finding the State Police's justification that it was too cold to detain defendant outside was sufficient under the totality of the circumstances.

The Court held that the trial court mistakenly applied State v. Woodson, 236 N.J. Super. 537 (App. Div. 1989), and State v. Conquest, 243 N.J. Super. 528 (App. Div. 1990), and that the opening of the car door constituted an impermissible search.

In State v. Woodson, 236 N.J. Super. 537 (App. Div. 1989), an officer opened a car door without warning during a traffic stop and an empty beer can fell out. The officer reasoned the beer can gave him probable cause to search the car. The search resulted in the discovery of marijuana. The court held there are three factors to consider in deciding whether an officer opening a car door is lawful: (1) whether the officer had permission; (2) whether the officer gave a warning; and (3) whether the officer first spoke with the driver. “Suddenly opening a car door is unconstitutionally intrusive because the police officer thereby surprises the occupant when the latter is entitled to consider [their] private affairs secure from outside scrutiny .... Opening the door sufficiently partakes of an “exploratory investigation” as to constitute a search.”

There is a public safety exception to this rule as explained in State v. Conquest, 243 N.J. Super. 528 (App. Div. 1990).

State v. Bookman, 251 N.J. 600 (2022)

(Hot pursuit & residential entry based upon an ATS warrant)

Law enforcement officers have a duty to enforce validly issued arrest warrants without distinction, whether they were issued for minor or serious offenses. When there is a warrant out for a person's arrest, even if that warrant is only for the failure to pay an outstanding traffic fine," an officer is required to arrest the individual regardless of the reason and [does] not have to investigate the nature of the charge.

Against this analytical backdrop, and considering the totality of the circumstances presented here, we now hold the State Police officers were not entitled to enter the 1237 Thurman Street residence under the hot pursuit doctrine. The officers did not act in an objectively reasonable manner when they chose to execute a four-month-old ATS warrant for Bell's failure to appear in response to a Title 39 violation at 1:00 a.m. Although police officers are permitted to enter the subject of an arrest warrant's home when they have reason to believe the subject is in, this rule does not extend to third-party homes. Moreover, the municipal court that issued the ATS warrant only authorized Bell's arrest and the entry of his home, if necessary. The warrant did not authorize officers to pursue Bookman into 1237 Thurman Street.

Because the State Police did not have any information that Bookman was involved in any criminal activity, Bookman's decision to run from the scene did not constitute grounds to invoke the hot pursuit doctrine.

In this case, the officers knew that the ATS warrant was for a minor traffic offense and had no reason to suspect there was any risk of danger or destruction of evidence relevant to that warrant that may have justified a hot pursuit. This Court has characterized the "sanctity of one's home" as "among our most cherished rights." Invocation of the hot pursuit doctrine under these circumstances is a weak attempt to justify this violation of one of our most cherished constitutional rights.

State v. Scott, ___ N.J. ___ (2023)
2023 WL 1112558

(Error by police dispatcher attributable to the police)

After pleading guilty to robbery, defendant appeals the denial of his motion to suppress an imitation handgun and the victim's cell phone found on his person when he was stopped and frisked by police. The officers detained defendant because he fit the be-on-the-lookout (BOLO) description of the person who had committed a robbery in the vicinity just minutes earlier. The BOLO described the robber as a Black male wearing a dark raincoat. However, the victim did not provide the race of the perpetrator when she reported the crime. The State acknowledges it does not know why the police dispatcher included a racial description of the robber in the BOLO alert.

This appeal requires us to address three issues of first impression. As a threshold matter, we must decide whether the conduct of a police dispatcher can be the basis for an equal protection violation under the New Jersey Constitution. We hold that decisions made and actions taken by a dispatcher can be attributed to police for purposes of determining whether a defendant has been subjected to unlawful discrimination.

Second, we address whether "implicit bias" can be a basis for establishing a prima facie case of police discrimination under the State v. Segars, 172 N.J. 481 (2002) burden-shifting paradigm. The problem of implicit bias in the context of policing is both real and intolerable. Accordingly, we hold evidence that permits an inference of implicit bias can satisfy a defendant's preliminary obligation to establish a prima facie case of discrimination under Segars. When, as in this case, the evidence supports such an inference, a burden of production shifts to the State to provide a race-neutral explanation. The State's inability to offer a race-neutral explanation for the dispatcher's assumption that a Black man committed the robbery constitutes a failure to rebut the presumption of unlawful discrimination.

Third, we must decide whether and in what circumstances the independent source and inevitable discovery exceptions to the exclusionary rule apply to the suppression remedy for a violation of Article I, Paragraphs 1 and 5 of the New Jersey Constitution. After considering the twin purposes of the exclusionary rule and balancing the cost of suppression against the need to deter discriminatory policing and uphold the integrity of, and public confidence in, the judiciary, we conclude the independent source exception does not apply in these circumstances. That exception allows a reviewing court to redact unlawfully obtained information to determine whether the remaining information is sufficient to justify a search. We conclude the application of any such redaction remedy would undermine the deterrence of discriminatory policing and send a message to the public that reviewing courts are permitted to essentially disregard an equal protection violation so long as police also relied on information that was lawfully disseminated.

With respect to the inevitable discovery doctrine, we hold it may apply to racial discrimination cases only if the State establishes by clear and convincing evidence that the discriminatory conduct was not flagrant. Because the State acknowledges it does not know why the dispatcher assumed the robber was Black, it cannot meet that burden of proof. We therefore reverse the denial of defendant's motion to suppress.

State v. Ingram, ___ N.J. Super. ___ (App. Div. 2023)
2023 WL 1938322

(Warrantless entry upon curtilage)

The court considers whether a police officer, who walked onto the driveway of a home without permission or a warrant, was lawfully there when he observed illegal narcotics in a hole in the home's front porch. Because the driveway was part of the home's curtilage, the court holds that the officer conducted an unlawful search and his subsequent observation of contraband in the hole in the porch did not satisfy the plain-view exception. Accordingly, the court reverses the trial court's denial of defendant's motion to suppress the seized contraband.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." Accordingly, constitutional protection against unlawful searches and seizures applies with maximum force to governmental intrusions into the home. The United States Supreme Court has repeatedly held that a home's curtilage, the area immediately surrounding and associated with the home, is protected by the Fourth Amendment, like the home itself. The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened. When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred.

State v. Smith, 251 N.J. 244 (2022)

(Tinted windows)

The stop was not supported by a reasonable and articulable suspicion of a motor vehicle violation. N.J.S.A. 39:3-75, which governs automotive safety glass, does not apply to window tint violations. Consistent with the plain language of N.J.S.A. 39:3-74, reasonable and articulable suspicion of a tinted windows violation arises only when a vehicle's front windshield or front side windows are so darkly tinted that police cannot clearly see people or articles within the car.