



Gasper testified that when he arrived on scene, another officer, Sgt. Tubic, indicated to Sgt. Gasper which vehicle belonged to Defendant. Sgt. Gasper approached Defendant and asked for his credentials (motor vehicle registration, proof of insurance, and driver's license). Defendant provided his driver's license and stated that his other documents were in his vehicle. During this conversation, emergency medical technicians ("EMTs") were tending to Defendant and placing a support collar on his neck. At this point, Sgt. Gasper went to Defendant's vehicle, entered the vehicle through the front passenger door, opened the glove compartment, and therein observed a handgun with an extended magazine. After advising Sgt. Tubic of the firearm and making it safe, Defendant was placed under arrest for possession of a firearm. Subsequently, Patrolman Howley performed an inventory search of the vehicle which revealed a small amount of marijuana and paraphernalia. Defendant was then issued a summons for disorderly persons offenses.

On direct-examination, Sgt. Gasper admitted that he did not obtain consent to enter the vehicle from Defendant. On cross-examination, Sgt. Gasper indicated that he did not ask Defendant to obtain the documents from the vehicle. Sgt. Gasper also testified that at no point did Defendant say he was unwilling to provide the documents from his vehicle, and at no point did anyone say Defendant was unable to enter the vehicle to retrieve the documents. To the best of Sgt. Gasper's recollection, Defendant was never placed on a stretcher at the scene of the accident. Further, when Defendant was placed under arrest, he was held in Patrolman Howley's patrol vehicle, as opposed to being placed in an ambulance.

On re-direct, Sgt. Gasper stated that he did not ask Defendant to enter the vehicle because he observed that EMTs were placing a support collar on his neck. Further, prior to finding the firearm, Sgt. Gasper had no reason to believe there was any contraband in the vehicle, and no intention to search the car or any compartment within the car other than the glove compartment.

## LEGAL ANALYSIS

A search is properly defined as government action that intrudes on a reasonable expectation of privacy. Katz v. United States, 389 U.S. 347 (1967). Unless a warrantless search falls into a recognized exception to the warrant requirement, it is presumptively unreasonable and therefore constitutionally prohibited. State v. Wilson, 178 N.J. 7, 12 (2003). A search (warrantless or otherwise) must be supported by probable cause, which has been described by New Jersey courts as “a ‘well grounded’ suspicion that a crime has been or is being committed.” State v. Waltz, 61 N.J. 83 (1972) (quoting State v. Burnett, 42 N.J. 377, 386-387 (1964)). In many areas, the New Jersey Constitution affords citizens a greater level of protection against unreasonable searches and seizures than under the United States Constitution. See State v. Johnson, 193 N.J. 528, 541 (2008); State v. Eckel, 185 N.J. 523, 537-38 (2006); State v. Carty, 170 N.J. 632, 639, 648-51 (2002), modified by 174 N.J. 351 (2002).

New Jersey case law recognizes a limited exception to the warrant requirement for law enforcement officers to enter a motor vehicle solely for the purpose of obtaining motor vehicle license and registration from a place where it is reasonably likely for it to be stored within the vehicle. State v. Boykins, 50 N.J. 73, 77 (1967); State v. Jones, 195 N.J. Super. 119 (App. Div. 1984). However, the officer must provide Defendant with an opportunity to produce the credentials before entering the vehicle. Id. at 123 (“We read Boykin and Patino as requiring a showing that defendant was either unable or unwilling to produce the registration and insurance card. No such showing was made here.”) (citing State v. Boykins, 50 N.J. 73, 77 (1967); State v. Patino, 83 N.J. 1, 12 (1980)).

At the motion hearing for this case, the State argued that because Defendant was being tended to by emergency medical technicians and being fitted for a neck collar, it was not

unreasonable for Sgt. Gasper to go directly to the vehicle to look for the credentials. Because of this, Sgt. Gasper was then lawfully in the vehicle when he discovered the firearm and therefore the seizure of the firearm falls into the plain view exception to the warrant requirement. State v. Bruzesse, 94 N.J. 210 (1983). The New Jersey Supreme Court addressed similar facts to the instant case in State v. Keaton, 222 N.J. 438 (2015). Keaton involved a one-car accident where defendant had been removed from vehicle and was receiving treatment from emergency medical personnel. Id. at 443. The trooper in Keaton never asked the defendant for his credentials or for permission to enter the vehicle. Id. at 444.

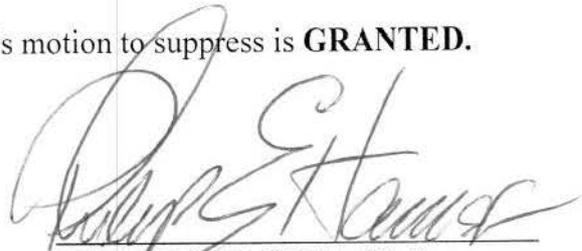
Further, the trooper never asked the EMTs for assistance in determining whether defendant was able to provide his credentials, nor did he ask defendant for his credentials once his injuries were tended to at the hospital: “Instead, the trooper made the decision to search defendant’s car for credentials only for the trooper’s convenience and expediency, without ever providing defendant the opportunity to present them.” Id. at 450. The Court held that the trooper never provided a reasonable opportunity for the defendant in Keaton to produce his credentials. Therefore, the trooper was not lawfully in the vehicle when he observed the contraband and the search could not be justified under the plain view exception to the warrant requirement. Id. at 451.

Pursuant to the holding in Keaton, Sgt. Gasper was required to give Defendant a reasonable opportunity to retrieve the documents from the vehicle before entering the vehicle himself. Id. The testimony at the motion hearing makes it clear that Sgt. Gasper did not ask Defendant to do so. Sgt. Gasper also admitted that no one, including Defendant, ever indicated that Defendant was unable or unwilling to retrieve the documents himself. The facts in Keaton show that – even where a Defendant had been transported to the hospital for medical treatment –

law enforcement officers must at a minimum inquire whether a motorist is able to obtain the documents himself, and provide a reasonable opportunity for him to do so. For these reasons, Sgt. Gasper was not lawfully in the viewing area when he observed the firearm, and therefore the seizure of the firearm from the vehicle does not fall into the plain view exception to the warrant requirement. State v. Bruzesse, 94 N.J. 210 (1983). Further, any controlled dangerous substance (CDS) or paraphernalia recovered from the vehicle during the ensuing inventory search must also be suppressed as a fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

### **CONCLUSION**

For the reasons stated above, Defendant's motion to suppress is **GRANTED**.



**PHILIP E. HAINES, J.S.C.**