SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interest of brevity, portions of any opinion may not have been summarized.)

State v. Ornette M. Terry (A-23-16) (077942)

Argued October 11, 2017 -- Decided March 14, 2018 -- Corrected March 16, 2018

ALBIN, J., writing for the Court.

The Court considers whether an officer acted reasonably, in accordance with New Jersey precedents permitting a limited registration search without a warrant and the dictates of the Fourth Amendment and Article I, Paragraph 7 of the State Constitution, when he searched defendant's glove box.

Union Township Police Officer Devlin observed defendant's GMC truck run a stop sign and almost strike his patrol car. Officer Devlin activated the overheard lights and siren. Defendant did not pull to the side of the road. Instead, without signaling, he zigzagged back and forth from the right to the left lane in traffic. Officer Devlin relayed the truck's license plate number to a dispatcher, who notified him that the vehicle was a Hertz rental, which had not been reported stolen. After a half mile, defendant turned into a gas station where he came to a stop.

Officer Devlin parked his patrol car behind defendant's truck while a back-up police officer in a marked unit pulled in front of the truck, effectively blocking it in. With the other officer beside him and their guns trained on defendant, Officer Devlin repeatedly ordered defendant to show his hands, but defendant made no response. Twenty to thirty seconds later, Officer Devlin opened the driver's door and commanded that he step out of the vehicle. Defendant did so, leaned against the truck, put his hands in his pockets, and asked why the officers had pulled him over. Although Officer Devlin repeatedly instructed defendant to show his hands, he was slow to comply. The two officers quickly patted defendant down, assuring themselves he was not armed with a weapon.

When Officer Devlin asked defendant for identification, defendant reached into his pocket and presented his license. Officer Devlin next requested that defendant produce the vehicle's registration and insurance card. Defendant did not respond, "[h]e just stood there with a blank stare on his face." The officer asked a second time, and defendant "shrugged his shoulders." Defendant made no non-verbal gestures to indicate that the papers were on his person or in the truck. Finally, Officer Devlin asked defendant whether he owned the truck or had any paperwork for it. Again, defendant did not respond. Officer Devlin went to the passenger's side of the truck, opened the door, and looked in the glove box—"[t]he most common place" where papers are stored. Although he found no documentation in the glove box, the light from his flashlight reflected against a white object on the passenger's floorboard. That object was a handgun.

The trial court denied defendant's motion to suppress. The court found that Officer Devlin "was a reasonable and credible witness" and concluded that because defendant failed to produce the vehicle registration on demand, Officer Devlin had a right to search for the registration, rental agreement, and insurance in the area where such documents are usually kept. The court further determined that Officer Devlin's observation of the handgun met the plain view exception to the warrant requirement. At the conclusion of a jury trial, defendant was found guilty of second-degree unlawful possession of a handgun and fourth-degree possession of hollow point bullets. A panel of the Appellate Division reversed, determining that the warrantless search of defendant's truck violated both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. The Court granted the State's petition for certification. 228 N.J. 448 (2016).

HELD: Sufficient credible evidence supported the trial court's determination that defendant was given an adequate opportunity to present the vehicle's registration before the search commenced. When a driver is unwilling or unable to present proof of a vehicle's ownership, a police officer may conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle. When a police officer can readily determine that the driver or passenger is the lawful possessor of the vehicle—despite an inability to produce the registration—a warrantless search for proof of ownership will not be justified.

1. One of the well-established exceptions to the warrant requirement is the automobile exception. A corollary is the authority of a police officer to conduct a pinpointed search for proof of ownership when a motorist "is unable or unwilling to produce his registration or insurance information." State v. Keaton, 222 N.J. 438, 442-43 (2015). The State has a "compelling interest in maintaining highway safety by ensuring that only qualified drivers operate motor vehicles and that motor vehicles are in a safe condition." State v. Donis, 157 N.J. 44, 51 (1998). That interest extends to ensuring that operators are not in possession of stolen vehicles. The operator of a motor vehicle must "exhibit the registration certificate, when requested to so to do by a police officer," N.J.S.A. 39:3-29, and must "comply with any direction, by voice or hand" by the officer, N.J.S.A. 39:4-57. A "police officer is authorized to remove any unregistered vehicle from the public highway to a storage space or garage," N.J.S.A. 39:3-4, or to impound a car that he reasonably believes may be stolen, N.J.S.A. 39:5-47. Had Officer Devlin not been able to search the glove compartment, his other option would have been to impound the vehicle. An inventory search of an impounded vehicle is a constitutionally permissible practice. (pp. 14-21)

2. Since State v. Boykins, 50 N.J. 73, 82-83 (1967), New Jersey courts have repeatedly reaffirmed the vitality of the limited registration exception to the warrant requirement. In Keaton, a unanimous Court affirmed and applied the limited registration exception, holding that when an operator is "unable or unwilling" to produce his registration, an officer may conduct a limited and focused search for the ownership credentials. 222 N.J. at 442-43. The Court made clear that a search for proof of ownership must be reasonable in scope and therefore "confined to the glove compartment or other area where registration might normally be kept in a vehicle." Id. at 449. The authority to conduct a warrantless registration search is premised on a driver's lesser expectation of privacy in his vehicle and on the need to ensure highway and public safety. The courts in a number of other jurisdictions have determined that, in appropriate circumstances, a limited warrantless search of a motor vehicle for proof of ownership does not violate the Fourth Amendment, and the Court continues to stand with those jurisdictions. (pp. 21-31)

3. The rationale for a limited registration search exception is (1) the minimal invasion of the driver's reasonable expectation of privacy; (2) the furtherance of public safety in general and officer safety in particular; and (3) the recognition that, for constitutional purposes, a brief and restricted search is arguably less intrusive than impounding the vehicle and conducting an inventory search later. Accordingly, after a driver is given the opportunity to present the vehicle's ownership credentials but is unwilling or unable to do so, a police officer may engage in a pinpointed search limited to those places, such as a glove box, where proof of ownership is ordinarily kept. If a driver or passenger explains to an officer that he has lost or forgotten his registration, and the officer can readily determine that either is the lawful possessor, then a warrantless search for proof of ownership is not justified. Modern technology may increasingly allow police officers to make such timely determinations. (pp. 31-34)

4. The trial court held that defendant was given a meaningful opportunity to present the truck's rental papers, and he failed to do so. There is sufficient credible evidence to support that conclusion. From the objectively reasonable viewpoint of the officers, defendant was unwilling or unable to produce proof of ownership. At that point, the totality of defendant's behavior raised a reasonable suspicion that the truck might be a stolen vehicle. Permitting a driver to maintain possession of a potentially stolen motor vehicle is a public safety risk. All in all, the officers acted reasonably, in accordance with New Jersey precedents permitting a limited registration search without a warrant and the dictates of the Fourth Amendment and Article I, Paragraph 7 of the State Constitution. (pp. 34-39)

The judgment of the Appellate Division is **REVERSED** and the matter is **REMANDED** to the Appellate Division for consideration of the issues not reached by it on defendant's direct appeal.

CHIEF JUSTICE RABNER, DISSENTING, observes that an examination of the history and scope of the driving credentials exception reveals that its foundation is far from strong. Chief Justice Rabner adds that the exception is potentially quite broad and permits law enforcement to search a vehicle without probable cause, when officer safety is not an issue, and when there is no legitimate need for credentials. Stressing the Court's limiting principle—that a warrantless search for credentials cannot be justified when "the officer can readily determine that either" the driver or passenger "is the lawful possessor"—Chief Justice Rabner notes that, because officers on duty nearly always have access to electronic records, few warrantless searches for credentials could ever be justified.

JUSTICES PATTERSON, FERNANDEZ-VINA, and SOLOMON join in JUSTICE ALBIN's opinion. CHIEF JUSTICE RABNER filed a separate, dissenting opinion, in which JUSTICES LaVECCHIA and TIMPONE join.

SUPREME COURT OF NEW JERSEY
A-23 September Term 2016
077942

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ORNETTE M. TERRY, a/k/a KEITH TERRY, KEITH M. TERRY, ORHETTE TERRY, and RASHEIA TERRY,

Defendant-Respondent.

Argued October 11, 2017 – Decided March 14, 2018 - Corrected March 16, 2018

On certification to the Superior Court, Appellate Division.

Milton S. Leibowitz, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for appellant (Thomas K. Isenhour, Acting Union County Prosecutor, attorney; Milton S. Leibowitz and Kimberly L. Donnelly, of counsel and on the briefs).

Tamar Y. Lerer, Assistant Deputy Public Defender, argued the cause for respondent (Joseph E. Krakora, Public Defender, attorney; Tamar Y. Lerer, of counsel and on the briefs).

Steven A. Yomtov, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Christopher S. Porrino, Attorney General, attorney; Steven A. Yomtov, of counsel and on the brief).

Alexi Machek Velez argued the cause for amicus curiae American Civil Liberties Union of New Jersey (Edward L. Barocas, Legal Director, attorney; Alexi Machek Velez,

Alexander R. Shalom, Edward L. Barocas, and Jeanne M. LoCicero, of counsel and on the briefs).

JUSTICE ALBIN delivered the opinion of the Court.

A police officer has the lawful right to request that a driver, stopped for a motor vehicle violation, provide proof of ownership. N.J.S.A. 39:3-29. One reason for this regulatory law is to ensure that the driver is not operating a stolen motor vehicle. When a driver is unwilling or unable to present such proof, our jurisprudence permits the officer to conduct a limited search of those places in the vehicle where proof of ownership is ordinarily kept. See State v. Keaton, 222 N.J. 438, 448-49 (2015); State v. Pena-Flores, 198 N.J. 6, 31 (2009). This very narrow exception to the warrant requirement is based primarily on public-safety concerns that require prompt action, as in the present case.

Defendant Keith Terry caused a patrol car to activate its lights and siren after the rental truck he was driving ran a stop sign. Defendant triggered a dangerous chase as he eluded the police, weaving through traffic before pulling into a gas station. The police removed defendant from the truck at gunpoint, and defendant did not respond to an officer's repeated requests to show the truck's registration or proof of ownership. In light of defendant's silence and his failure to indicate he was in lawful possession of the truck, a police officer

conducted a limited search of the glove compartment for the truck's ownership papers and, in the process, observed a handgun in plain view on the vehicle's floor. Thereafter, defendant was charged with and found guilty by a jury of unlawful possession of a firearm and hollow point bullets.

Although the trial court denied defendant's motion to suppress the handgun, the Appellate Division reversed and vacated defendant's conviction. It held that the search was unreasonable because the police did not give defendant the opportunity to produce the truck's registration.

We conclude that the Appellate Division erred in substituting its factfindings for those of the trial court. Sufficient credible evidence supported the trial court's determination that defendant was given an adequate opportunity to present the vehicle's registration before the search commenced. We reaffirm our decision in Keaton -- and in previous cases -- that, when a driver is unwilling or unable to present proof of a vehicle's ownership, a police officer may conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle. We add this limiting principle. When a police officer can readily determine that the driver or passenger is the lawful possessor of the vehicle -- despite an inability to produce the registration -- a warrantless search for proof of ownership will not be justified.

The limited registration search exception to the warrant requirement has long been embedded in our jurisprudence and has been adopted by many other courts. We reject the constitutional challenge to the limited registration search exception, as applied here, and hold that the search of defendant's glove box was reasonable under the Fourth Amendment and Article I, Paragraph 7 of our State Constitution.

Accordingly, we reverse the judgment of the Appellate Division and remand for its consideration issues not reached on defendant's direct appeal.

I.

A.

Defendant was charged in an indictment with second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), and fourth-degree possession of hollow point bullets, N.J.S.A. 2C:39-3(f). Defendant claimed that the police discovered the handgun and bullets by searching his truck in violation of the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution. He therefore moved to suppress those items from evidence in his upcoming trial.

At a suppression hearing, the State called Union Township Police Officer Joseph Devlin, the sole witness to testify at the hearing. The record before us is based on his testimony.

On December 31, 2010, at approximately 6:50 p.m., while operating a marked patrol car in Union Township, Officer Devlin observed defendant's GMC truck run a stop sign on Ingersoll Terrace and turn right onto the eastbound lane of Morris Avenue. As it barreled through the stop sign, the GMC truck almost struck Officer Devlin's patrol car, which was traveling eastbound on Morris Avenue. On this portion of Morris Avenue, two lanes flow in each direction. Officer Devlin activated the overheard lights and siren of his patrol car, which was then positioned immediately behind defendant's vehicle.

Defendant did not pull to the side of the road, despite the flashing lights and blaring siren behind him. Instead, without signaling, he zigzagged back and forth from the right to the left lane in traffic. During the chase, Officer Devlin relayed the truck's license plate number to a dispatcher, who notified him that the vehicle was a Newark Airport Hertz rental, which at that point had not been reported stolen. After traveling approximately a half mile, defendant turned into a gas station where he came to a stop.

Officer Devlin parked his patrol car behind defendant's truck while a back-up police officer in a marked unit pulled in front of the truck, effectively blocking it in. The two officers drew their guns. As Officer Devlin walked toward the driver's door, his view was obscured by the truck's tinted rear

windows. Officer Devlin wondered why the truck failed to stop and whether it was stolen. When Officer Devlin reached the driver's door, he saw defendant seated behind the wheel.

With the other officer beside him and their guns trained on defendant, Officer Devlin repeatedly ordered defendant to show his hands, "for our safety [and] your safety," but defendant made no response. Twenty to thirty seconds later, Officer Devlin opened the driver's door and commanded that he step out of the vehicle. Defendant did so, leaned against the truck, put his hands in his pockets, and asked why the officers had pulled him over. Although Officer Devlin repeatedly instructed defendant to show his hands, he was slow to comply. The two officers quickly patted defendant down, assuring themselves he was not armed with a weapon.

When Officer Devlin asked defendant for identification, defendant reached into his pocket, pulled out his wallet, and presented his license. Officer Devlin next requested that defendant produce the vehicle's registration and insurance card. Defendant did not respond, "[h]e just stood there with a blank stare on his face." The officer asked a second time, and defendant "shrugged his shoulders." Defendant made no non-verbal gestures to indicate that the papers were on his person or in the truck. Finally, Officer Devlin asked defendant whether he owned the truck or had any paperwork for it. Again,

defendant did not respond; instead, "he just stood there with a blank stare."

At this point, Officer Devlin went to the passenger's side of the truck, opened the door, and using his flashlight looked in the glove box -- "[t]he most common place" where ownership and insurance papers are stored. Although he found no documentation in the glove box, the light from his flashlight reflected against a white object on the passenger's floorboard. That object was a handgun.[1]

Officer Devlin closed the passenger's door and arrested defendant. The officers searched defendant incident to the arrest and found a valid rental agreement for the truck in his front jacket pocket. The vehicle was towed to the Union Township police garage. Later, the police secured a search warrant and recovered the handgun, which was loaded with hollow point bullets.

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[1] At the suppression hearing, no one questioned how long Officer Devlin remained in the vehicle searching for ownership credentials and after spotting the handgun on the floorboard. A videotape of the search was not played at the suppression hearing but was played for the jury during Officer Devlin's direct examination at trial. On cross-examination, defense counsel posited to Officer Devlin that, based on the tape, he was in the vehicle for approximately ninety seconds. Officer Devlin basically responded that the tape speaks for itself. The videotape has not been made part of the appellate record.

B.

The trial court denied defendant's motion to suppress. The court found that Officer Devlin "was a reasonable and credible witness."[2] The court concluded that because defendant failed to produce the vehicle registration on demand, Officer Devlin had a right to search for the registration, rental agreement, and insurance in the area where such documents are usually kept. The court further determined that Officer Devlin's observation of the handgun met the plain view exception to the warrant requirement. The court also denied defendant's motion for reconsideration.

At the conclusion of a jury trial in August 2013, defendant was found guilty of both weapons offenses. The trial court sentenced defendant to a five-year prison term with a three-year period of parole disqualification for the handgun-possession offense and to a concurrent twelve-month term for the hollow-nose-bullet offense. Financial penalties and assessments were also imposed.

[2] Presumably, this overall crediting of Officer Devlin as a witness extended to Officer Devlin's testimony that he did not "know if the car was stolen," as he approached defendant's vehicle.

C.

A panel of the Appellate Division reversed the trial court's order suppressing the evidence and vacated defendant's conviction. The panel determined that the warrantless search of defendant's truck for the vehicle's registration or proof of ownership violated both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. In reaching that conclusion, the panel applied our decision in Keaton, which held that a driver must be given an opportunity to present his credentials, and only if he "is unable or unwilling to produce his registration or insurance information . . . may an officer conduct a search for those credentials." 222 N.J. at 442-43.

According to the panel, Officer Devlin assumed that defendant's shrug suggested that defendant did not know where the ownership credentials were located. The panel also surmised that "defendant's non-verbal response to Officer Devlin's requests may have been the product of fear." The panel reasoned that merely because defendant did not know the location of the credentials did not mean he was "unwilling" to produce them. The panel further reasoned that because the police did not give defendant the opportunity to reenter the truck, the State was foreclosed from arguing that defendant was "unable" to present the ownership papers. Under the panel's analysis, the State did

not establish that defendant was "unable or unwilling to produce" proof of ownership, and therefore a warrantless search was not justified. The panel also suggested that the search was unnecessary and therefore unreasonable because Officer Devlin could have issued summonses for failure to stop and unsafe lane change without access to paperwork showing a valid registration and insurance.

Finally, the panel opined that Keaton and Pena-Flores have effectively "superseded" State v. Lark, in which the Appellate Division ruled that the police could not search a car for a license when the driver's "identity was unnecessary to prove the motor vehicle offense." 319 N.J. Super. 618, 627 (App. Div. 1999), aff'd, 163 N.J. 294 (2000).

D.

We granted the State's petition for certification. 228 N.J. 448 (2016). We also granted the motions of the Attorney General of New Jersey and the American Civil Liberties Union of New Jersey (ACLU-NJ) to participate as amici curiae.

II.

A.

The State contends that the Appellate Division ignored the pronouncement in Keaton allowing for a limited registration search when a defendant is unwilling or unable to produce proof that he is the lawful possessor of a vehicle and when, as here,

the warrantless search is grounded in public safety. The State asserts that because of defendant's "threatening, non-compliant manner" and the officer-safety concerns that prompted his removal from the truck, the police acted reasonably by not permitting defendant to return to the vehicle before conducting a limited search of the glove box for the rental agreement. The State maintains that, given the totality of the circumstances, the officers acted in an objectively reasonable manner based on the fast-paced events facing them.

In support of the State's position, the Attorney General, as amicus curiae, posits that "[p]ublic safety must always be part of the calculus in assessing the reasonableness of police conduct in conducting a motor vehicle stop." The Attorney General contends that "defendant's evasive and obstructionist behavior" justified the officers removing defendant from the truck for their safety and that, given defendant's unwillingness or inability to produce the rental agreement or to indicate its location, the officers acted reasonably in not permitting him to return to the vehicle. The Attorney General submits that a defendant's failure to present proof of ownership "supports a reasonable suspicion that [a] vehicle is stolen," quoting State v. Holmgren, 282 N.J. Super. 212, 215 (App. Div. 1995), and points out that, here, defendant could easily have grabbed the gun on the floorboard had he been allowed to reenter the

vehicle. For those reasons, the Attorney General concludes that the limited search of the glove box for the rental agreement was constitutionally permissible.

B.

Defendant argues that a warrantless search for proof of a vehicle's ownership in a glove box, even in the limited circumstances permitted by Keaton, violates the Fourth Amendment. In defendant's view, because the United States Supreme Court has yet to recognize a "credentials exception" to the warrant requirement of the Fourth Amendment, this Court does not have the power to do so. Defendant, moreover, maintains that a credentials search could not be justified even if it were subject to the test articulated in Terry v. Ohio, 392 U.S. 1, 19-24 (1968), balancing the State's claimed need for the search against the intrusion into an individual's privacy rights. According to defendant, the balance favors the individual, not the government, because the rationale of a credentials search is predicated on law enforcement's need to access information about a vehicle's ownership and not to ensure officer safety. He reasons that merely because N.J.S.A. 39:3-29 requires a driver to present his registration to a police officer does not mean that the statute authorizes a search for the document. Additionally, defendant claims that the police gave him less than two minutes to present the documents and that was not "a

reasonable opportunity" to do so. In his view, the police should have "sent him on his way after he failed to present his credential[s] and was ticketed for that offense."

Aligned with defendant, the ACLU-NJ, as amicus curiae, expresses its hope that "this Court will repudiate the driving documents exception to the warrant requirement." Alternatively, the ACLU-NJ argues that the search for the vehicle's ownership papers in this case did not meet the standard set forth in Keaton. The ACLU-NJ submits that (1) defendant "was not provided a reasonable opportunity to present his own credentials, given the extreme circumstances of his seizure"; (2) "the search was not conducted for the purpose of establishing ownership of the vehicle"; and (3) the search exceeded its permissible scope and was not tailored to the traffic violation committed.

III.

A.

We first must address defendant's Fourth Amendment challenge to the constitutionality of the limited registration search exception to the warrant requirement set forth in New Jersey jurisprudence, most recently in Keaton. Although defendant did not raise a constitutional challenge to the limited registration search exception before the trial court or Appellate Division, we will decide the issue because of its

general importance and because only this Court can reverse its own precedents. See Presbyterian Homes of Synod v. Div. of Tax Appeals, 55 N.J. 275, 289 (1970) ("This Court may . . . accept a constitutional question not raised below." (citing Lettieri v. State Bd. of Med. Exam'rs, 24 N.J. 199, 206 (1957))).

When the trial court has applied the proper legal principles at a suppression hearing, we defer to its factual findings "so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014) (citing State v. Elders, 192 N.J. 224, 243 (2007)). Deference to those findings is particularly appropriate when the court had the "opportunity to hear and see the witnesses" on which it rendered its decision. See Elders, 192 N.J. at 244 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

B.

The United States Constitution and New Jersey Constitution prohibit law enforcement officials from carrying out "unreasonable searches and seizures" and guarantee that warrants shall not issue in the absence of "probable cause." U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" Riley v. California, 573 U.S. ___, 134 S. Ct. 2473, 2482 (2014) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006)); see also

State v. Novembrino, 105 N.J. 95, 185 (1987). "[T]he Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only 'unreasonable searches and seizures.' . . . The test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts." South Dakota v. Opperman, 428 U.S. 364, 372-73 (1976) (alteration in original) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 509-10 (1971) (Black, J., concurring and dissenting)).

Nevertheless, within our constitutional framework, a warrantless search is presumptively invalid and is permissible only if it falls within one of the recognized exceptions to the warrant requirement. Elders, 192 N.J. at 246 (citing State v. Pineiro, 181 N.J. 13, 19-20 (2004)); see also State v. Wilson, 178 N.J. 7, 12 (2003). One of the well-established exceptions to the warrant requirement is the automobile exception. Carroll v. United States, 267 U.S. 132, 153 (1925). In the context of an automobile stop, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Delaware v. Prouse, 440 U.S. 648, 654 (1979); cf. Terry, 392 U.S. at 21 (assessing reasonableness of warrantless police frisk of suspect, in part, by balancing "governmental interest which allegedly justifies official intrusion" against "the constitutionally protected

interests of the private citizen" (quoting Camara v. Mun. Court of San Francisco, 387 U.S. 523, 534-35 (1967))).

A corollary to the automobile exception -- one recognized in New Jersey and many other states -- is the authority of a police officer to conduct a pinpointed search for proof of ownership when a motorist "is unable or unwilling to produce his registration or insurance information." Keaton, 222 N.J. at 442-43. This limited registration search exception is partly rooted in the common-sense notion that the inability or unwillingness of a driver to produce a vehicle's registration may raise "a reasonable suspicion that the vehicle was stolen." See Holmgren, 282 N.J. Super. at 216. Although the limited registration search exception is well-ingrained in New Jersey jurisprudence, we have never before discussed the constitutional underpinnings of that doctrine.

IV.

A.

The justification for the limited registration search doctrine in many ways corresponds with that of the automobile exception to the warrant requirement. Under the Fourth Amendment, a police officer is authorized to conduct a warrantless search of a lawfully stopped motor vehicle "if it is 'readily mobile' and the officer has 'probable cause' to believe that the vehicle contains contraband or evidence of an offense."

State v. Witt, 223 N.J. 409, 422 (2015) (quoting Pennsylvania v. Labron, 518 U.S. 938, 940 (1996)).[3]

The automobile exception is premised on three rationales:

> (1) the inherent mobility of the vehicle, Carroll, 267 U.S. at 153;
>
> (2) the lesser expectation of privacy in an automobile compared to a home, California v. Carney, 471 U.S. 386, 391-93 (1985); and
>
> (3) the recognition that a Fourth Amendment intrusion occasioned by a prompt search based on probable cause is not necessarily greater than a prolonged detention of the vehicle and its occupants while the police secure a warrant, Chambers v. Maroney, 399 U.S. 42, 51-52 (1970).
>
> [Witt, 223 N.J. at 422-23.]

The inherent-mobility rationale does not require further analysis here, but the other two rationales offer strong support for the limited registration search exception.

B.

It is well understood that motorists have a lesser expectation of privacy in their vehicles when driven on our roadways. See State v. Donis, 157 N.J. 44, 51-52 (1998). Given

[3] Under Article I, Paragraph 7 of our State Constitution, we have adopted a more restrictive version of the automobile exception that allows for the search of a lawfully stopped vehicle "based on probable cause arising from unforeseeable and spontaneous circumstances." Witt, 223 N.J. at 450 (emphasis added). The federal approach permits a vehicle search based solely on probable cause. See Labron, 518 U.S. at 940.

New Jersey's "extensive regulation of its highways and thoroughfares, '[e]very operator of a motor vehicle must expect that the State, in enforcing its regulations, will intrude to some extent upon that operator's privacy.'" Ibid. (alteration in original) (quoting New York v. Class, 475 U.S. 106, 113 (1986)). Indeed, the State has a "compelling interest in maintaining highway safety by ensuring that only qualified drivers operate motor vehicles and that motor vehicles are in a safe condition." Id. at 51 (quoting State v. Kadelak, 280 N.J. Super. 349, 360 (App. Div. 1995)); see also Prouse, 440 U.S. at 658 ("The registration requirement . . . [is] designed to keep dangerous automobiles off the road."). That compelling state interest extends to ensuring that operators are not in possession of stolen vehicles. See Donis, 157 N.J. at 52 (noting that one reason for collection of registration information by Division of Motor Vehicles is "to assist law enforcement officers in locating the owners of stolen cars" (quoting Governor's Reconsideration and Recommendation Statement for A. 1845 & A. 2448 (1989), reprinted in N.J.S.A. 39:3-4)).

Under this highly regulated scheme, the operator of a motor vehicle must "exhibit the registration certificate, when requested to so to do by a police officer," N.J.S.A. 39:3-29, and must "comply with any direction, by voice or hand" by the officer, N.J.S.A. 39:4-57. Additionally, a "police officer is

authorized to remove any unregistered vehicle from the public highway to a storage space or garage," N.J.S.A. 39:3-4, or to impound a car that he reasonably believes may be stolen, after an operator or passenger is unable to establish he is in lawful possession, N.J.S.A. 39:5-47 ("The commission may authorize the seizure of a motor vehicle operated . . . when it has reason to believe that the motor vehicle has been stolen or is otherwise being operated under suspicious circumstances."), cited in State v. Hock, 54 N.J. 526, 532-35 (1969).

The Fourth Amendment, moreover, is not offended if an automobile is seized or its operator temporarily detained when a law enforcement officer has a reasonable and articulable suspicion that the vehicle is unregistered or stolen. See Prouse, 440 U.S. at 663.

C.

When the operator of a vehicle is unable or unwilling to produce the registration or ownership papers, as in the present case, a quick, pinpointed search for the documents in the glove compartment is arguably a lesser intrusion under the Fourth Amendment than the immediate impoundment of the vehicle and detention of the operator. That follows from the reasoning of the United States Supreme Court in adhering to the automobile exception. That Court has held, as one rationale for the automobile warrant exception, that "for Fourth Amendment

purposes, an immediate search of a vehicle may represent a lesser intrusion than impounding the vehicle and detaining its occupants while the police secure a warrant." See Witt, 223 N.J. at 424 (citing Chambers, 399 U.S. at 51-52); see also United States v. Ross, 456 U.S. 798, 831 (1982) ("A defendant may consider the seizure of the car a greater intrusion than an immediate search. . . . In effect, the warrantless search is permissible because a warrant requirement would not provide significant protection of the defendant's Fourth Amendment interests." (Marshall, J., dissenting) (citation omitted)); cf. Class, 475 U.S. at 118 (finding no Fourth Amendment violation when officer moved papers covering VIN inside vehicle because "search was far less intrusive than a formal arrest, which would have been permissible for a traffic offense under New York law").

In the case before us, had Officer Devlin not been able to conduct an immediate search of the glove compartment, his other option would have been to impound the vehicle. See Slockbower, 79 N.J. 1, 6 (1979); Hock, 54 N.J. at 532-35; see also N.J.S.A. 39:3-4; N.J.S.A. 39:5-47. An inventory search of an impounded vehicle is a constitutionally permissible practice. See Opperman, 428 U.S. at 369-72. Significantly, "standard inventories often include an examination of the glove compartment, since it is a customary place for documents of

ownership and registration." Id. at 372. For Fourth Amendment purposes, the impoundment and inventory search of a vehicle for registration arguably is more intrusive than a limited registration search at the scene.

With those principles in mind, we now look at the development of the limited registration search exception to the warrant requirement in this State and other jurisdictions.

V.

A.

The first reported mention of the limited registration search exception in New Jersey is in State v. Boykins, in which this Court upheld the constitutionality of the search of a car that crashed after a police chase. 50 N.J. 73, 82-83 (1967). In that case, the search was justified because the events suggested the probability that the vehicle's occupants "were involved in some substantial criminal affair" and that they "had on their persons or in the car contraband or instruments or the fruit of crime." Id. at 77-78. In writing for the Court, Chief Justice Weintraub noted what was to him an unremarkable principle:

> Surely not every traffic violation will justify a search of every part of the vehicle. A traffic violation as such will justify a search for things related to it. So, for example, if the operator is unable to produce proof of registration, the officer may search the car for evidence of ownership . . . .

> [Id. at 77 (emphasis added) (citation omitted) (citing Draper v. Maryland, 265 F. Supp. 718 (D. Md. 1967); People v. Prochnau, 59 Cal. Rptr. 265 (Ct. App. 1967)).]

It may well be that a limited registration search was an existing and unchallenged practice in New Jersey when Chief Justice Weintraub offered his illustrative dictum. The Chief Justice obviously viewed registration searches, under appropriate circumstances, as an acceptable practice at the time.

Since Boykins, the courts of this State have repeatedly reaffirmed the vitality of the limited registration exception to the warrant requirement. See Keaton, 222 N.J. at 448-50 (stating that when car is stopped for motor vehicle violation and driver is "unable or unwilling" to produce registration or proof of ownership, the officer may search the car for evidence of ownership); Pena-Flores, 198 N.J. at 31 (stating that when officer found that driver's license plate and bill of sale did not correspond to vehicle, officer "was entitled, separate and apart from the automobile exception, to look into the areas in the vehicle in which evidence of ownership might be expected to be found" (citing United States v. Kelly, 267 F. Supp. 2d 5, 14 (D.D.C. 2003); Boykins, 50 N.J. at 77; State v. Jones, 195 N.J. Super. 119, 122-23 (App. Div. 1984))); State v. Patino, 83 N.J. 1, 12 (1980) ("[A] search to find the registration would be

permissible if confined to the glove compartment or other area where a registration might normally be kept in a vehicle." (quoting State v. Barrett, 170 N.J. Super. 211, 215 (Law Div. 1979))); Holmgren, 282 N.J. Super. at 215 ("[W]here there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may search the car for evidence of ownership." (quoting Jones, 195 N.J. Super. at 122-23)); Jones, 195 N.J. Super. 122-23 (same); State v. Gammons, 113 N.J. Super. 434, 437-38 (App. Div.), aff'd o.b., 59 N.J. 451 (1971) (upholding search conducted "for the registration in the glove compartment, the logical place to look" because "[t]here was nothing improper or unreasonable in . . . doing so").

In Keaton, just three years ago, a unanimous Court affirmed and applied the limited registration exception, holding that when an operator is "unable or unwilling" to produce his registration, an officer may conduct a limited and focused search for the ownership credentials. 222 N.J. at 442-43, 448-50. No constitutional alarm was sounded about the validity of the limited registration exception.[4]

[4] The dissenters in this appeal, two of whom joined Keaton, now contend that the limited registration exception invoked in our decisions in Keaton, Pena-Flores, Patino, and Boykins, and in a number of Appellate Division decisions, "does not rest on solid legal ground." Post at ___ (slip op. at 1). We disagree.

In that case, a State Police trooper responded to the scene of an accident, where he found an overturned car. Id. at 443. At the time of the trooper's arrival, the driver was being treated by emergency medical technicians for his injuries. Ibid. The trooper did not ask the driver for his "credentials or request permission to enter the vehicle to obtain the registration and insurance information" because he knew the driver would be taken to the hospital and he did not "want to slow the process down." Id. at 443-44. The trooper entered the overturned car to retrieve the registration and insurance in the glove compartment and, while inside the vehicle, discovered a handgun in a backpack and marijuana on the dashboard. Id. at 444.

We found that the search violated the Fourth Amendment and Article I, Paragraph 7 of our State Constitution and upheld the suppression of the evidence because the trooper "was required to provide [the driver] with the opportunity to present his credentials before entering the vehicle." Id. at 442-43, 447-48, 451. In doing so, we restated the standard governing the limited registration search exception. A driver must be given an opportunity to present his registration or insurance information, and only if he "is unable or unwilling" to do so "may an officer conduct a search for those credentials." Id. at 442-43. An incapacitated driver -- for example, one rendered

unconscious -- will be "unable to produce proof of registration, [and therefore] the officer may search the car for evidence of ownership." See id. at 448.

We made clear that a search for proof of ownership must be reasonable in scope and therefore "confined to the glove compartment or other area where registration might normally be kept in a vehicle." Id. at 449 (quoting Patino, 83 N.J. at 12). While the scope of the search must be minimally intrusive and narrowly targeted to the area where a driver would ordinarily store his or her registration, id. at 448-49, an officer may seize any contraband within his plain view, id. at 448.

In summary, under our state law, police officers have the authority to verify the ownership of any lawfully stopped vehicle, N.J.S.A. 39:3-29, :4-57, and the authority to impound a vehicle when proof of ownership cannot be provided, see Hock, 54 N.J. at 532-35.[5] The authority to conduct a warrantless

[5] A number of jurisdictions have come to the common-sense conclusion that a police officer is authorized to conduct a limited registration search of a vehicle abandoned on a public highway for proof of ownership. See 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.4(d) (5th ed. 2012) ("A police officer has the right to investigate vehicles abandoned along public highways and in doing so is permitted to undertake a limited search for a certification of registration for the vehicle [in] those areas of a vehicle where it would reasonably be expected that such a certification of registration might be found." (alteration in original) (quoting Muegel v. State, 272 N.E.2d 617, 620 (Ind. 1971))).

registration search is premised on a driver's lesser expectation of privacy in his vehicle and on the need to ensure highway and public safety. A motorist must be given a meaningful opportunity to produce ownership credentials, but if he is either unable or unwilling to do so, an officer may conduct a brief and targeted search of the area where the registration might normally be kept in the vehicle. See Keaton, 222 N.J. at 448.

B.

The courts in a number of other jurisdictions have determined that, in appropriate circumstances, a limited warrantless search of a motor vehicle for proof of ownership does not violate the Fourth Amendment. See generally 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.4(d) (5th ed. 2012) ("Under a variety of circumstances, it is reasonable for the police to make a limited search of a vehicle in an effort to determine ownership."); H.H. Henry, Annotation, Lawfulness of Nonconsensual Search and Seizure Without Warrant, Prior to Arrest, 89 A.L.R.2d 715 (2017).

In United States v. Brown, the United States Court of Appeals for the Ninth Circuit upheld a limited warrantless search for a vehicle's registration. 470 F.2d 1120, 1121-22 (9th Cir. 1972). In that case, police officers stopped the defendant for a traffic violation. Id. at 1121. The defendant

failed to produce both his driver's license and the vehicle registration as required by state law, "responded vaguely to a question regarding the vehicle's ownership," and "was found in the illegal possession of chemical mace." Id. at 1121-22. The Court of Appeals concluded that those facts justified a limited search for the vehicle registration. Id. at 1122.

In Kelly, the United States District Court for the District of Columbia, in addressing a registration search, noted that "[t]he state courts of New Jersey have adopted a sagacious approach to the issue." 267 F. Supp. 2d at 13. In recognizing the registration search exception, the District Court stated:

> Police officers need to know ownership information of vehicles involved in traffic violations and accidents, and of abandoned vehicles. When a law enforcement officer is investigating a traffic violation or an accident, and the driver is unwilling or unable to produce the registration of the vehicle involved to the officer upon demand, it is reasonable for the officer to conduct a limited search for the registration in those areas where the registration would likely be located.
>
> [Id. at 14.]

The District Court in Kelly further explained that an individual's privacy interest is diminished when the search proceeds after a registration request is "unheeded" and the "search is limited to the places where a registration would usually be found -- specifically, the glove compartment of the

vehicle." Ibid. On balance, the District Court concluded that although "the intrusion is slight, the governmental interest is quite significant." Ibid.; see also United States v. Lopez, 474 F. Supp. 943, 948 (C.D. Cal. 1979) (holding that limited registration search permissible only if officers make "reasonable attempt to procure the registration before an unconsented entry" and at a minimum make inquiry of "the whereabouts of the registration prior to the entry").

A number of state courts have adopted registration search exceptions similar to our own. See, e.g., People v. Flores, 596 N.E.2d 1204, 1210 (Ill. 1992) (upholding constitutionality of search "limited to parts of the automobile which would provide [ownership] identification information"); People v. Braan, 437 N.Y.S.2d 388, 389-90 (App. Div. 1981) (sanctioning registration search of rental vehicle because of officer-safety concerns); State v. Byrd, 209 S.E.2d 516, 517 (N.C. Ct. App. 1974) (upholding registration search because "[w]hen defendant could not produce a registration certificate, the examination of the glove compartment for evidence of registration and ownership was reasonable, and the officer could not ignore the pistol that he found"); State v. Bright, 493 P.2d 757, 757-58 (Or. Ct. App. 1972) (upholding officer's search of abandoned car's ownership documents, which yielded evidence of burglary); Jordan v. Holland, 324 S.E.2d 372, 377-78 (W. Va. 1984) (upholding

constitutionality of "warrantless search of the glove compartment for ownership identification"); cf. State v. Williams, 648 P.2d 1156, 1162 (Kan. Ct. App. 1982) (holding that search of truck for "documents required to be maintained and kept in the truck cab, and to check for required safety equipment, is not unreasonable under the Fourth Amendment of the United States Constitution").

In People v. Martin, the California Court of Appeal upheld a registration search in a case involving a driver stopped for illegible plates. 100 Cal. Rptr. 272, 273 (Ct. App. 1972). The driver was not the owner of the vehicle, was unable to produce a license, and did not know the location of the registration. Ibid. Under those circumstances, the appellate court determined that the police officers were justified in "searching the automobile for the registration certificate so they could (1) issue a citation to the actual owner, and (2) determine whether the vehicle was stolen." Ibid. Notably, the appellate court sanctioned the officer's search of "the glove compartment himself, rather than risk the danger that the passenger might pull a weapon out of the glove compartment." Ibid.

The Martin court's analysis has been adopted by the California Supreme Court. See, e.g., In re Arturo D., 38 P.3d 433, 439 n.5 (Cal. 2002); People v. Turner, 878 P.2d 521, 545-46

(Cal. 1994); People v. Webster, 814 P.2d 1273, 1281-82 (Cal. 1991).

Some courts, however, have rejected the registration search exception. See, e.g., State v. Branham, 952 P.2d 332, 333 (Ariz. Ct. App. 1997) (holding that, under Fourth Amendment, police officer making legitimate traffic stop may not "conduct a limited search for the vehicle registration card based solely on the driver's failure to produce it"); State v. Bauder, 924 A.2d 38, 51 n.8 (Vt. 2007) (stating that driver's failure to produce ownership documents is not basis to search vehicle, even if limited to glove compartment or sun visor).

We find the majority view, favoring a limited registration exception, more persuasive because it balances legitimate governmental interests in highway safety with individual rights.

We reject the ACLU-NJ's argument that because the United States Supreme Court has never passed on the validity of the limited registration search exception, the many courts that have done so have exceeded their constitutional authority. State and federal courts frequently address issues raised for the first time that require novel constitutional interpretations. The Constitution must adapt to new circumstances never envisioned by its drafters, and that organic process begins in various state and federal trial and appellate courts. The United States Supreme Court sits as the ultimate court of last resort with its

jurisdiction primarily confined to reviewing decisions of state supreme and lower federal courts. See U.S. Const., art. III, § 2.

The limited registration search exception to the warrant requirement has been an accepted doctrine in this State for more than fifty years. The dissent criticizes judicially created exceptions to the warrant requirement, such as this one. But the only exceptions to the warrant requirement are judicially created. Clearly, there have been opportunities to challenge the limited registration exception before the United States Supreme Court. We are confident that this warrant exception passes constitutional muster.

C.

In our view, a weighing of the driver's individual privacy rights against the government's legitimate interests in promoting highway and public safety leads to the conclusion that a limited registration search exception rests on solid constitutional ground. We continue to stand with those jurisdictions that have held the same. The rationale for a limited registration search exception is (1) the minimal invasion of the driver's reasonable expectation of privacy; (2) the furtherance of public safety in general and officer safety in particular; and (3) the recognition that, for constitutional purposes, a brief and restricted search is arguably less

intrusive than impounding the vehicle and conducting an inventory search later. Accordingly, after a driver is given the opportunity to present the vehicle's ownership credentials but is unwilling or unable to do so, a police officer may engage in a pinpointed search limited to those places, such as a glove box, where proof of ownership is ordinarily kept.

We further note that if a driver or passenger explains to an officer that he has lost or forgotten his registration, and the officer can readily determine that either is the lawful possessor, then a warrantless search for proof of ownership is not justified. Modern technology may increasingly allow police officers to make such timely determinations.

One last point. We reject the Appellate Division's conclusion that Keaton and Pena-Flores have effectively "superseded" Lark. In Lark, a police officer stopped the defendant -- the driver -- because of a missing license plate. 319 N.J. Super. at 621. The passenger immediately turned over the car's registration and insurance and his own driver's license, and a computer check verified the validity of the vehicle's registration. Ibid. The defendant told the officer that he did not have his license with him. Ibid. The officer, however, learned through a computer check that no license had been issued to the defendant. Ibid. Based on the apparently false information provided, back-up officers were called to the

scene. Id. at 622. After the defendant and passenger were ordered to exit the car, an officer searched the vehicle for the defendant's identifying papers and found illicit drugs in the process. Ibid.

Overruling the trial court, the Appellate Division found that the search violated the Fourth Amendment and suppressed the evidence, id. at 624, and we summarily affirmed, 163 N.J. 294. The Appellate Division reasoned that there was no basis to believe that the car was stolen and that the absence of a license did "not establish probable cause to believe there was 'criminal activity afoot.'" 319 N.J. Super at 626 (quoting State v. Hill, 115 N.J. 169, 174 (1989)). The Appellate Division concluded that the officer could have detained the defendant until he learned his true identity or, if that failed, arrested him for driving without a license, but not search the car for identification without probable cause. Id. at 627.

The facts in Lark are starkly different from the facts in the case before us and those in Keaton and Pena-Flores -- which were also registration cases. In contrast to the events in Lark, here, defendant not only operated his truck evasively, creating serious public-safety risks, but he also failed to produce any proof of the vehicle's ownership. Indeed, defendant's overall obstructive behavior raised an objectively reasonable suspicion that the vehicle might be stolen. Finding

that the registration search was constitutional in this case does not suggest that Lark was wrong in finding the license search unconstitutional there. The two cases rest on entirely different rationales. The vitality of Lark is not an issue here.

In conclusion, we reaffirm the validity of the limited registration search exception and apply the standard outlined in Keaton to the facts before us.

VI.

From the beginning, Officer Devlin's encounter with defendant involved a very real danger. Defendant ran a stop sign, almost striking Officer Devlin's patrol car and prompting Officer Devlin to activate his lights and siren. Instead of pulling to the side of the road, defendant triggered a chase, weaving in and out of traffic, in a seeming attempt to elude the officer. For a half mile, defendant ignored the patrol car's visual and auditory signals to stop until he finally turned into a gas station.

Defendant's inexplicable and evasive behavior made Officer Devlin wonder whether the truck was stolen. The fact that Hertz had not reported the rental truck stolen at that point did not mean that the truck was not stolen. The truck could have been hijacked from the true lessee a half hour or even minutes earlier. The latent danger confronting Officer Devlin and the

back-up officer caused them to approach the truck with guns drawn. When the officers arrived at the driver's door, defendant repeatedly failed to respond to Officer Devlin's order to show his hands. After exiting the vehicle, defendant repeatedly failed to follow instructions to keep his hands out of his pockets.

Although defendant presented his license, he did not respond to three requests to produce the truck's registration or paperwork and did not indicate who owned the vehicle. Instead, he just stood there with a blank stare and, on one occasion, shrugged his shoulders. The officers did not have to wait an indeterminate amount of time before acting in these fraught circumstances, as the dissent suggests.

The Appellate Division posited that defendant's shoulder shrug suggested he did not know the location of the truck's paperwork and that the frightening nature of the encounter may have caused him to forget that he placed the truck's rental papers in his coat pocket. On the other hand, defendant may have been struck dumb because he knew that a loaded handgun was laying on the passenger's floorboard. Speculation that leads down many different alleyways, however, does not advance the legal analysis required.

The test is not what thoughts were in defendant's mind. Rather, the test is whether the officers acted in an objectively

reasonable manner in light of the tense and perilous situation confronting them. See State v. Watts, 223 N.J. 503, 514 (2015) ("[T]he 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." (quoting State v. Bruzzese, 94 N.J. 210, 219 (1983))). Police officers -- such as those here -- must make decisions in the moment, with uncertain information at hand and without the luxury of considered reflection. See id. at 514-15.

The trial court held that defendant was given a meaningful opportunity to present the truck's rental papers, and he failed to do so. We find that there is sufficient credible evidence to support that conclusion, and therefore we will not second guess the trial court's determination. See Gamble, 218 N.J. at 424. We cannot say that the officers acted unreasonably by not asking a fourth or fifth time for the papers or waiting several more minutes in the hope defendant would speak. From the objectively reasonable viewpoint of the officers, defendant was unwilling or unable to produce proof of ownership. At that point, the totality of defendant's behavior raised a reasonable suspicion that the truck might be a stolen vehicle. Permitting a driver to maintain possession of a potentially stolen motor vehicle is a public safety risk.

Based on decades of this State's jurisprudence, Officer Devlin had the right to conduct a limited, pinpointed search for the rental papers in the places where they are ordinarily kept. Here, he looked in the glove compartment and, while doing so, observed in plain view a handgun on the floorboard. The officers then arrested defendant and impounded the truck. The police later secured a warrant and seized the handgun, which was loaded with hollow point bullets.

It bears mentioning that the officers lawfully removed defendant from the truck for their safety and frisked him for weapons. Having done so, the officers were not required to allow the unresponsive and uncooperative defendant to return to the vehicle before Officer Devlin conducted a limited registration search. See Martin, 100 Cal. Rptr. at 273. The officers were entitled to take reasonable, common-sense measures to protect their own lives as they were attempting to determine whether the vehicle was stolen. See Terry, 392 U.S. at 23. The United States Supreme Court has "expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations" and has noted "'that a significant percentage of murders of police officers occurs when the officers are making traffic stops.'" Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977) (quoting United States v. Robinson, 414 U.S. 218, 234 n.5 (1973)). In short,

the Constitution commands police officers to act reasonably, not to needlessly place their lives at risk.

Had the limited registration search not been a permissible option, the officers would not have allowed defendant to drive off in the truck when his lawful possession of the vehicle was in doubt. Under the circumstances in this case, even the dissent concedes that the officers were authorized to impound the vehicle. Post at ___ (slip op. at 35). Afterward, a standard inventory of the vehicle, including a search for the registration in the glove box, would have been permissible, leading to the discovery of the gun. See Opperman, 428 U.S. at 372. The dissent's approach, which would disallow a limited registration search, merely delays the inevitable search. The dissent does not satisfactorily explain how the vehicle's impoundment and an inventory search would have been a less intrusive approach than the one taken by Officer Devlin. Indeed, the limited registration exception allows the same search with the potential for a more minimal invasion of privacy. Had Officer Devlin found the vehicle's rental papers in the glove compartment, instead of a loaded gun on the floor, presumably defendant would have been permitted to go on his way. It would be odd if, here, an impoundment of the vehicle and inventory search were reasonable for Fourth Amendment purposes but a brief and limited registration search were not.

All in all, the officers acted reasonably, in accordance with our precedents permitting a limited registration search without a warrant and the dictates of the Fourth Amendment and Article I, Paragraph 7 of our State Constitution.

VII.

For the reasons expressed, we reverse the judgment of the Appellate Division and affirm the trial court's order denying the motion to suppress. We remand to the Appellate Division for consideration of the issues not reached by it on defendant's direct appeal.

JUSTICES PATTERSON, FERNANDEZ-VINA, and SOLOMON join in JUSTICE ALBIN's opinion. CHIEF JUSTICE RABNER filed a separate, dissenting opinion, in which JUSTICES LaVECCHIA and TIMPONE join.

SUPREME COURT OF NEW JERSEY
A-23 September Term 2016
077942

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ORNETTE M. TERRY, a/k/a
KEITH TERRY, KEITH M. TERRY,
ORHETTE TERRY, and RASHEIA TERRY,

Defendant-Respondent.

CHIEF JUSTICE RABNER, dissenting.

To safeguard the rights guaranteed by the Fourth Amendment and Article I, Paragraph 7 of the State Constitution, the police must obtain a warrant from an impartial judicial officer before they may conduct a search. In limited circumstances, law enforcement can justify a warrantless search if it is based on a well-delineated exception to the warrant requirement.

The Court today invokes a "driving credentials exception" to uphold a warrantless search of a car for a driver's registration and insurance. Because the doctrine does not rest on solid legal ground, I believe the Court should reconsider rather than reinforce the theory.

In this case, the police conducted a warrantless search of a sports-utility vehicle (SUV) less than two minutes after a stop to search for the driver's registration and insurance. The

driver had committed two motor vehicle violations: he drove through a stop sign and made unsafe lane changes. The police then lawfully stopped him.

The driver handed over a valid license but did not give the police his registration and insurance card. With guns pointed at him, he did not respond when the police first asked for the documents and shrugged in response to a second request. At that point, the motor vehicle offenses were complete, and the police knew they had no need for additional credentials to write up a traffic summons. They also knew that the vehicle had not been reported stolen and that defendant was unarmed. Nonetheless, without a search warrant, without probable cause to believe the car contained evidence of a crime, without a basis to search for weapons, and without a legitimate law enforcement need for any other documents, the police searched the glove compartment -- within two minutes of stopping the car.

A warrantless search is presumptively invalid under the Federal and State Constitutions. The police here relied on a "driving credentials exception" to the warrant requirement. A single sentence in dicta from fifty years ago suggested that officers can "search [a] car for evidence of ownership" "if the operator is unable to produce proof of registration." State v. Boykins, 50 N.J. 73, 77 (1967). The Court has repeated the comment since then with little analysis to justify the

underlying concept. Today, the Court cements a warrant exception to search for driving credentials.

There are multiple well-settled exceptions to the warrant requirement, and a few relate directly to motor vehicles. The police may search a vehicle if they have probable cause to believe it contains contraband or evidence of an offense. California v. Acevedo, 500 U.S. 565, 580 (1991); State v. Witt, 223 N.J. 409, 447 (2015). They may conduct a protective sweep -- for officer safety -- if there are specific and articulable facts that show the suspect is dangerous and may gain immediate control of a weapon. Michigan v. Long, 463 U.S. 1032, 1049-50 (1983); State v. Lund, 119 N.J. 35, 50 (1990). Law enforcement may also rely on other recognized exceptions to the warrant requirement. But despite the language in Boykins from a half century ago, few jurisdictions have allowed police officers to search a vehicle for driving credentials when they lack probable cause, cannot articulate a safety need, and have no legitimate law enforcement need for the items sought.

Because the driving credentials exception erodes one of the most basic constitutional protections, I respectfully dissent.

I.

On New Year's Eve of 2010, a Union Township police officer saw a white GMC Acadia (a mid-size SUV) drive through a stop sign and turn onto Morris Avenue. The officer activated the

patrol car's overhead lights and sirens and drove behind the SUV. The driver did not pull over; he continued driving and changed lanes several times without signaling.

The officer called dispatch to summon backup and report the make and license plate of the SUV. Dispatch responded that the vehicle had been rented from Hertz at Newark Airport. Had it been reported stolen, dispatch would have relayed that information as well. It did not. The SUV eventually stopped at a gas station after traveling about a half mile.

The officer parked behind the vehicle, and a back-up patrol car boxed in the SUV from the front. Two officers then approached the SUV on foot with their guns drawn. One pointed his gun at the driver and instructed him to show his hands; the driver did not comply. After twenty to thirty seconds, the officer opened the front door on the driver's side and ordered the driver to get out. The driver stepped out of the car, stood against the car with his hands in his pockets, and asked why he had been pulled over.

The officer directed the driver to take his hands out of his pockets; the driver complied only after "a couple of" requests. The officers then patted the driver down to check for weapons -- and found none. After an officer asked for identification, the driver took out his wallet and handed over a valid New Jersey driver's license. The officer called dispatch,

confirmed that the information on the license was accurate, and learned that the driver had no outstanding warrants.

The officer twice asked the driver for the vehicle registration and insurance card. The driver did not respond and shrugged his shoulders. When the officer asked if he owned the car or had any paperwork for it, the driver still made no response.

At this point, less than two minutes after the stop, the officer entered the SUV -- without a warrant -- and searched the glove compartment. At a hearing on a motion to suppress, the officer at first testified that he needed the insurance card and registration to issue "a Title 39 summons for failure to stop and unsafe lane change." On cross-examination, the officer conceded that he did not need either document to issue a summons for the traffic violations. He agreed that he could look up the registration information on a terminal in the patrol car, and acknowledged that, because the SUV was a rental car, he knew that it was registered to Hertz and not the driver.

The officer found nothing in the empty glove compartment. But during the approximately ninety seconds he spent inside the SUV, he noticed the handle of a handgun "just out from . . . underneath" the front passenger seat.

The officer then arrested the driver, defendant Ornette Terry, and searched him. Inside defendant's coat pocket, the

officer found a valid Hertz rental agreement for the SUV. The police impounded the car, obtained a search warrant, and seized the gun, which was loaded with hollow-point bullets.

A grand jury charged defendant with second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(b), and fourth-degree unlawful possession of hollow-point bullets, contrary to N.J.S.A. 2C:39-3(f). He was not charged with other offenses.

II.

Under both the Federal and State Constitutions, there is a strong preference for police officers to obtain a warrant before they conduct a search. Ornelas v. United States, 517 U.S. 690, 699 (1996); State v. Gonzales, 227 N.J. 77, 90 (2016). A warrantless search is presumptively invalid, and the State has the burden to justify it under one of the limited number of "specifically established and well-delineated exceptions" to the warrant requirement. Katz v. United States, 389 U.S. 347, 357 (1967); State v. Reece, 222 N.J. 154, 167 (2015). Such exceptions are "jealously and carefully drawn." Jones v. United States, 357 U.S. 493, 499 (1958).

The automobile exception is one of the few recognized exceptions. To invoke the exception under the Fourth Amendment, the motor vehicle must be "readily mobile," and the officer must have probable cause "to believe [the vehicle] contains

contraband." Pennsylvania v. Labron, 518 U.S. 938, 940 (1996). Under Article I, Paragraph 7 of the State Constitution, the State must also show that probable cause arose "from unforeseeable and spontaneous circumstances." Witt, 223 N.J. at 450. Because the police lacked probable cause to believe that evidence of a crime would be found in defendant's car, the State does not rely on the well-settled automobile exception here.

Officer safety provides another legitimate basis for a warrantless search. Under Long and Lund, police can conduct a protective sweep of a car when they have a specific, articulable basis to believe they are dealing with an armed and dangerous individual. 463 U.S. at 1049-50; 119 N.J. at 50. Because the police could not make that showing, the State does not rely on the safety exception either.

In appropriate cases, other well-recognized exceptions to the warrant requirement can justify a warrantless search of a vehicle, including consent, Schneckloth v. Bustamonte, 412 U.S. 218, 248-49 (1973); State v. Carty, 170 N.J. 632, 635 (2002); plain view, Coolidge v. New Hampshire, 403 U.S. 443, 465-66 (1971) (plurality opinion); Gonzales, 227 N.J. at 82; community caretaking, Cady v. Dombrowski, 413 U.S. 433, 441 (1973); State v. Vargas, 213 N.J. 301, 314 (2013); and exigency, Kentucky v. King, 563 U.S. 452, 460 (2011); State v. Cassidy, 179 N.J. 150, 160 (2004). None of those exceptions apply here.

The State instead contends that New Jersey's driving credentials exception justified a warrantless search within two minutes of the traffic stop in this case. An examination of the history and scope of the exception reveals that its foundation is far from strong.

A.

The doctrine stems from Boykins. In that 1967 case, the defendant led police on a dangerous, high-speed car chase. 50 N.J. at 75. During the chase, the "[d]efendant's car narrowly missed two pedestrians." Ibid. The police fired at the car to disable it and killed one of the passengers. Ibid. When the car finally stopped, police searched it and found an envelope that contained marijuana. Id. at 75-76. This Court upheld the warrantless search under a theory akin to the automobile exception. Under the circumstances, the Court found a strong "probability that the occupants had on their persons or in the car contraband or instruments or the fruit of crime." Id. at 78. In short, the Court found probable cause to justify a car search without a warrant. The Court added the following observation in dicta:

> Surely not every traffic violation will justify a search of every part of the vehicle. A traffic violation as such will justify a search for things related to it. So, for example, if the operator is unable to produce proof of registration, the officer may search the car for evidence of ownership . . . .

> [Id. at 77 (emphasis added) (citations omitted).]

To support that proposition, the Court cited two out-of-state cases: People v. Prochnau, 59 Cal. Rptr. 265 (Ct. App. 1967), and Draper v. Maryland, 265 F. Supp. 718 (D. Md. 1967).

Prochnau did not involve a typical traffic stop. In that case, a police officer arrested the defendant on the request of a parole officer for a parole violation. 59 Cal. Rptr. at 268-69. The police impounded the defendant's car to safeguard its contents. Id. at 268, 270. They later searched the glove compartment to determine who the car was registered to -- "for their guidance in the ultimate disposition of the vehicle." Id. at 270. The intermediate California appellate court found that the search was not unreasonable. Ibid.

In Draper, the police stopped a car "for a routine registration and license check." 265 F. Supp. at 720. The driver, defendant Price Draper, had no license and no identification. Ibid. He handed the police a registration card in the name of "Roscoe Jones." Ibid. The police arrested him for driving without a license and issued a summons. Ibid. Next, they left Draper's car at the side of the road and took him to the sheriff's office to make arrangements to raise money for bail. Ibid. Soon after, the arresting officer returned to

the car and searched it "[p]reparatory to storing the car" and "to obtain further identification." Id. at 720-21.

The "narrow question" before the district court was whether "the search of the vehicle . . . was incidental to and substantially contemporaneous with" the defendant's arrest. Id. at 720. The court concluded that it was. Id. at 721.

Neither Prochnau nor Draper supports the notion that police may search a vehicle for driving credentials, outside of an arrest context, because the driver was unable to produce proof of registration. Cf. Boykins, 50 N.J. at 77.

B.

Over the years, the Court has repeated the dicta in Boykins on a number of occasions. See, e.g., State v. Keaton, 222 N.J. 438, 448-49 (2015); State v. Pena-Flores, 198 N.J. 6, 31 (2009); State v. Hock, 54 N.J. 526, 533 (1969). Those cases are discussed below. In one, the Court did not uphold a warrantless search; in another, probable cause existed; in the third, there was a basis to search other than the credentials doctrine. The opinions, thus, did not analyze the theory underlying Boykins in depth. In State v. Lark, however, both the Appellate Division and this Court discussed the credentials exception at some length and raised serious doubts about it. 163 N.J. 294 (2000); 319 N.J. Super. 618 (App. Div. 1999).

1.

In Lark, the police stopped a car for a relatively minor traffic violation -- a missing front license plate. 319 N.J. Super. at 621. The passenger provided a registration certificate, insurance card, and driver's license. Ibid. According to a computer check, the car had not been reported stolen, and the registration was valid. Ibid. The driver, however, could not produce a license, and no record of a license in his name could be found through a computer search. Ibid. The officer suspected that the driver lied when he said "he could not produce his license because he had been mugged the week before." Id. at 622. The officer then searched the car for identifying papers and found drugs. Ibid.

The Appellate Division suppressed the search. It noted that "none of the frequently recognized exceptions to the probable cause requirement" justified the search. Id. at 624. Nothing in the record supported a protective sweep; the drugs were not in plain view; and the defendant had not consented to a search. Id. at 624-25.

The State relied on the dictum in Boykins, which the Appellate Division declined to embrace. The panel explained that although the "dictum appears to approve of registration searches without probable cause," it is "problematic" because "[s]ince Boykins, no Supreme Court has allowed a search based

solely on a driver's inability to present driving credentials. In every case we examined, the facts supported probable cause to search or arrest. Notably, the search in Boykins itself was based on probable cause." Id. at 625-26 (footnote citing cases omitted). The panel added that, "[i]n any event, because this case does not involve a registration search, we need not determine the full import of the Boykins dictum here." Id. at 626 (emphasis added).

Returning to the facts of the search, the Appellate Division observed that there was no basis to conclude the car was stolen and that defendant's lie about his identity and failure to produce a license did not establish probable cause that a crime was underway. Ibid. In addition, the court noted that the offense -- driving without a license -- was complete when Lark failed to present his license on request. Ibid. The panel therefore found that there was no need to enter the car to look for a license or identification. Id. at 627.

The panel noted that the police could "either detain the driver for further questioning" to satisfy themselves of "the driver's true identity, or arrest the driver for operating a vehicle without a license." Ibid. (citation omitted). But because "neither the Fourth Amendment nor our state constitution permits the warrantless entry of a vehicle to search for

identification without probable cause," the officer could not enter the car "to look for identification." Ibid.

This Court affirmed the appellate decision substantially for the reasons in Judge Eichen's opinion and added several points. The Court noted that "[r]outine or simple motor vehicle offenses will usually warrant only the issuance of a summons," not a custodial arrest. 163 N.J. at 296. If a driver has no license and offers false information, however, the police may have a sufficient basis to detain the driver for further questioning and, if that does not yield results, they "may take the driver into custody." Id. at 297. But the police may not search a car "unless one of the existing exceptions to the warrant requirement" applies. Ibid.

After a lawful arrest, the Court continued, "the police may, under certain circumstances, impound the automobile and conduct an inventory search." Ibid. With "no reasonable basis to believe that the vehicle had been stolen," though, "there was no basis to impound the vehicle incident to the driver's arrest." Ibid.

The force of that logic applies as well to a warrantless search of a car that has not been reported stolen, whose driver produced a valid license.

2.

The Court has revisited the dicta in Boykins twice since Lark.[1] The Court devoted one paragraph to the issue in Pena-Flores. That consolidated case involved two appeals. In the first, the police pulled over a driver, defendant Pena-Flores, for a traffic violation and smelled marijuana; the Court found probable cause and justified the search that followed under the automobile exception. 198 N.J. at 12, 30-31.

In the second case, a State Trooper pulled over another driver, defendant Fuller, for a traffic violation. Id. at 31. The driver handed over a license issued to Charles Bradley along with a bill of sale. Id. at 15. The photo on the license did not resemble Fuller, and "the license number was handwritten on the back." Ibid. After checking with dispatch, the trooper learned that the license plate and bill of sale did not match the car Fuller was driving. Id. at 16, 31. After the trooper

[1] Years before Lark, the Court briefly referred to the Boykins dicta in Hock, 54 N.J. at 533. Hock, though, is not directly on point; it involved an inventory search of an impounded car. Id. at 530-31. The majority also cites State v. Patino, 83 N.J. 1, 12 (1980), as support for a credentials exception. In that case, the Court rejected the warrantless search of the trunk of a car incident to the arrest of the driver and a passenger; the Court made only passing reference to searches for identification. Id. at 4, 7, 12. The Court did not write an opinion in State v. Gammons, 113 N.J. Super. 434, 437-38 (App. Div.), aff'd o.b., 59 N.J. 451 (1971), which involved questionable analysis: a documents search of a car conducted after the defendant could not produce a registration certificate -- from the hospital.

arrested Fuller, he searched the car and found a loaded handgun and drugs. Id. at 16.

To be sure, at the time of the search, "the trooper already had probable cause to arrest the defendant for possession of a stolen car, and, as in Pena-Flores, a justifiable basis to impound the car" after which "the troopers could have secured a warrant." Id. at 46-47 (Albin, J., dissenting). Indeed, there was probable cause to believe that the car contained evidence of theft: genuine driving credentials that would identify the car's rightful owner.[2]

The majority, citing Boykins, upheld part of the search and observed that the trooper was "entitled, separate and apart from the automobile exception, to look into the areas in the vehicle in which evidence of ownership might be expected to be found." Id. at 31. For additional support, the Court cited United States v. Kelly, 267 F. Supp. 2d 5, 14 (D.D.C. 2003).

In Kelly, officers responded to a traffic accident and found a seriously injured driver with foam coming out of his mouth and a glazed look in his eyes. 267 F. Supp. 2d at 8. An

[2] At the time, the automobile exception required a showing of exigency as well. Pena-Flores, 198 N.J. at 20-22. Today, under Witt, the search would have been constitutional under the automobile exception because of the unforeseeable and spontaneous circumstances that gave rise to probable cause. Witt, 223 N.J. at 450; see also Pena-Flores, 198 N.J. at 48 (Albin, J., dissenting).

officer entered the car to help remove the driver; while inside, the officer saw a gun box. Ibid. Once the driver was out of car, officers tried to speak with him to learn his identity, but he was incoherent. Ibid. They also found no identification in the driver's pockets. Ibid. At that point, two officers entered the car a second time to search "for a driver's license in the glove compartment" and "the gun that would presumably accompany the gun box." Ibid. They found neither. After an ambulance took the driver to the hospital, and a computer look-up disclosed no information about the car's ownership, an officer entered the car for a third time to look for the registration. Ibid. He found a bill of sale/registration in the glove compartment and a pistol near the center console. Id. at 8-9.

The district court upheld the third entry as a search for registration to establish ownership, and cited a decision of the New Jersey Appellate Division. Id. at 13 (citing State v. Jones, 195 N.J. Super. 119 (App. Div. 1984)).[3] Unlike Boykins and the appeal in this case, however, the police in Kelly responded to a medical emergency and sought to identify a seriously injured driver on his way to the hospital. The case

[3] Jones repeated the dicta in Boykins but refused to uphold a warrantless car search because the police did not afford the driver a "reasonable opportunity . . . to retrieve [his] registration and insurance card." 195 N.J. Super. at 123.

is infused with concerns tied to exigency and law enforcement's community caretaking role; it is not a firm foundation for a driving credentials exception to the warrant requirement.

Both Pena-Flores and Kelly cited a portion of Professor LaFave's treatise that states, "[u]nder a variety of circumstances, it is reasonable for the police to make a limited search of a vehicle in an effort to determine ownership." 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.4(d) (4th ed. 2004) (cited in Pena-Flores, 198 N.J. at 31; Kelly, 267 F. Supp. 2d at 13). As discussed further below, however, Professor LaFave does not endorse a broad-based exception to the warrant requirement to search for driving credentials when there is no probable cause. See 5 LaFave, § 10.8(a) n.33 (5th ed. 2012).

More recently, in Keaton, the Court declined to uphold a search based on Boykins. The State Police responded to the scene of an accident and saw an overturned car. 222 N.J. at 443. Emergency medical technicians removed the injured driver from the car and treated him on the scene for cuts on his face. Ibid. Without first speaking to the driver, a trooper entered the car and conducted a warrantless search for registration and insurance documents. Id. at 444. He also found a handgun and drugs. Ibid.

The Court cited Boykins but invalidated the search because "the trooper was required to provide defendant with the opportunity to present his credentials before entering the vehicle." Id. at 442. In light of those facts, the Court had no reason to question the driving credentials doctrine.

As the above cases reveal, the Court has cited the dicta in Boykins on a number of occasions since 1967. For a doctrine of such seemingly long standing, however, the Court has hardly made it a practice to embrace warrantless searches for credentials when there was neither probable cause nor another settled basis to search. Cf. Lark, 319 N.J. Super. at 625.

C.

The Attorney General and Public Defender reference two notable decisions of the United States Supreme Court. Neither justifies a credentials exception to the warrant requirement. In fact, the United States Supreme Court has never recognized such an exception.

In New York v. Class, the police stopped a driver for speeding and a cracked windshield; the driver presented registration and insurance but no license. 475 U.S. 106, 108 (1986). The car's vehicle identification number (VIN) was obscured by papers on the dashboard and could not be seen from outside the car -- in violation of federal regulations. Id. at 108, 111-12. The officer reached inside the car and moved the

papers to reveal the VIN; in doing so, he came across a gun. Id. at 108. The Court upheld the search in light of the driver's diminished expectation of privacy in the VIN balanced against the governmental interest "served by obtaining the VIN." Id. at 113-14, 118-19. The balancing of interests is not the same in this case, as discussed in the following section.

A dozen years later in Knowles v. Iowa, the Supreme Court considered the search of a car stopped for speeding. 525 U.S. 113, 114 (1998). An officer issued a citation and then conducted a full search of the car. Ibid. The police found drugs under the driver's seat. Ibid.

The Court held that the search violated the Fourth Amendment. Chief Justice Rehnquist, writing for a unanimous Court, explained that any safety concerns could have been addressed in less intrusive ways -- for example, a patdown or protective frisk of the car, if supported by the requisite showing of danger. Id. at 117-18. And in language that resonates strongly in this case, the Court noted that there was no "need to discover and preserve evidence." Id. at 118. "Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the . . . offender or in the . . . car." Ibid.

Once again, Class and Knowles offer scant support for a driving credentials exception.

III.

To justify a credentials exception to the warrant requirement, the majority relies on a general balancing test. It also highlights case law from other states. Both points warrant careful examination.

A.

The majority's test weighs "the driver's individual privacy rights against the government's legitimate interests in promoting highway and public safety." Ante at ___ (slip op. at 31). That concept stems from Camara v. Municipal Court of San Francisco, in which the Supreme Court assessed the appropriate standard under the Fourth Amendment for a municipal housing inspection of a private residence. 387 U.S. 523, 525 (1967). In that context, the Court made two observations: (1) "it is obviously necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," id. at 534-35; and (2) "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails," id. at 536-37.

The Court later cited those concepts in Terry v. Ohio, 392 U.S. 1, 20-21 (1968), the seminal stop-and-frisk ruling, and Delaware v. Prouse, 440 U.S. 648, 654-57 (1979), which invalidated investigative stops of automobiles at traffic checkpoints, without probable cause or reasonable suspicion, to examine driver's licenses and registration documents. See also Class, 475 U.S. at 116-17.

In applying the test, the majority concludes that the government's interest in "officer safety in particular" outweighs "the minimal invasion of the driver's reasonable expectation of privacy." Ante at ___ (slip op. at 31). The majority also notes "that, for constitutional purposes, a brief and restricted search is no more intrusive than impounding the vehicle and conducting an inventory search later." Id. at ___ (slip op. at 31-32). As a result, the Court concludes that a driving credentials exception is reasonable if a driver is unwilling or unable to present documents about a vehicle's ownership after being given an opportunity to do so. Id. at ___ (slip op. at 32).

Pivotal to the majority's safety concern is that the officers had a reasonable suspicion that the SUV was stolen. See id. at ___ (slip op. at 36). The trial court, which heard the officer's testimony, never made such a finding. The majority reaches that conclusion on its own.

The facts reveal the following. At the time of the stop, the dispatcher relayed that the car had not been reported stolen. As the officer explained at the suppression hearing, had the SUV been reported stolen, the dispatcher would have said so. He did not. The most the officer could say was that he "didn't know if the car was stolen." He also testified that he sought access to the glove compartment for the insurance card and registration "[t]o issue a Title 39" traffic summons -- but later admitted he did not need the items for that purpose.

Still, we are told that the SUV might have been stolen and not yet reported taken. That argument proves too much. It means that anytime a driver produces a valid driver's license but not a registration card, the police can search for driving credentials because the vehicle might theoretically be stolen. More is needed to establish the government's interest in safety.

Next, the majority suggests that a search for driving documents is a "minimal invasion" of a driver's reasonable expectation of privacy. Id. at ___ (slip op. at 31). In reality, the police spent ninety seconds to search an empty glove compartment -- along with other areas of the car that came into view. That type of intrusion is considerably more than minimal. Although the credentials search is supposed to be confined to areas where registration documents might normally be kept, see Keaton, 222 N.J. at 449, it is not a clinical, laser-

like search. An examination of the glove compartment, center console, sun visor, and similar areas brings much of the car's interior into plain view and exposes it to law enforcement.

In addition, the majority believes that the search was not more intrusive than impounding the vehicle and conducting an inventory search afterward. See ante at ___ (slip op. at 21, 31-32, 38). The majority offers three bases to justify impounding the SUV: the Court's prior decisions in Hock and State v. Slockbower, 79 N.J. 1 (1979); N.J.S.A. 39:3-4; and N.J.S.A. 39:5-47. The majority is mistaken on all of those counts.

First, the inventory search in Hock was based on probable cause to believe a car was stolen. After a lawful motor vehicle stop of a Cadillac, the driver gave the police an expired registration certificate that matched the license plates on the car; the registration, however, was for an Oldsmobile. Hock, 54 N.J. at 530. To the officer, "it appeared that the license plates on the car related to a different vehicle." Id. at 533. The police, therefore, had "reason to believe" that the car had been stolen. See id. at 534 (citing N.J.S.A. 39:5-47). And their "well-grounded suspicion that the car was stolen warranted arrest of its occupants." Id. at 533.

In other words, the police in Hock conducted an inventory search, based on probable cause to believe a car was stolen,

after they had arrested the driver and passenger and impounded the car. No one involved in this appeal, however, suggests there was probable cause to believe defendant Terry was driving a stolen SUV. Hock, therefore, simply does not justify impounding defendant's vehicle. Nor does Slockbower, in which this Court recounted what had occurred in Hock: "In State v. Hock, an impoundment and search were upheld on probable cause to believe the car was stolen." 79 N.J. at 6 (citation omitted).

Second, N.J.S.A. 39:3-4 does not authorize officers to impound registered vehicles if a driver is unable to hand over the car's registration. Instead, the law empowers officers "to remove any unregistered vehicle from the public highway to a storage space or garage" at the owner's expense. N.J.S.A. 39:3-4 (emphasis added).

The SUV was registered. And the officers knew that at the time. Not only did a police dispatcher tell the officer on the scene that the SUV had been rented from Hertz at Newark Airport -- which does not rent unregistered cars -- but the dispatcher also relayed that "it came back that the car was registered to Hertz." Even without that affirmative proof, the failure to present a registration document during a car stop does not establish that a car is unregistered.

Third, N.J.S.A. 39:5-47 provides for the seizure of a vehicle when "the commission . . . has reason to believe that

the motor vehicle has been stolen or is otherwise being operated under suspicious circumstances." Unlike in Hock, there was no reason to believe the SUV was stolen. Once again, the officer testified simply that he "didn't know if the car was stolen." And the dispatcher had confirmed and relayed that the car was not reported stolen. N.J.S.A. 39:5-47, therefore, also does not support impounding the SUV.

Using the majority's balancing approach, it was far more invasive to search the interior of defendant's SUV -- without either probable cause or a warrant -- than to write up a summons for a traffic violation.

The Legislature has set forth an alternative, far more lenient approach to cases in which a driver fails to hand over a registration certificate. Under N.J.S.A. 39:3-29, a driver must present a license, insurance card, and registration certificate when an officer asks for them. If the driver of a car fails to do so, the police can issue a summons that may result in a fine of $150. The statute does not authorize impoundment. If the driver later shows up in court with the documents, the municipal court judge can dismiss the charges. N.J.S.A. 39:3-29.

In this case, defendant had the car rental agreement in his coat pocket and could have availed himself of the statute. But despite the leniency built into the law for this minor offense, the driving credentials exception allows officers to escalate

the situation on the scene at the very earliest stage and conduct a warrantless search.

Missing from the majority's approach is any consideration of probable cause. To protect an individual's legitimate privacy interests, law enforcement officers are routinely required to demonstrate that there is probable cause to search a particular location. Both in our State and in the federal system, the search of a vehicle may not need a warrant, but a showing of probable cause is still required for good reason: to uphold a citizen's right of privacy.

In my view, the existence of probable cause to search for driving credentials could alter the overall balance and override a motorist's privacy interest when the police do not have a warrant. Just the same, the absence of probable cause also affects that balance and cautions against the invasion of privacy that cases like this entail.

B.

The majority highlights cases from other jurisdictions for support. Ante at ___ (slip op. at 28-30). A close look at the limited number of state court decisions reveals a familiar pattern: Cases refer to a search for ownership documents, but the searches in question are also supported on another ground. The rulings, thus, undermine the independent legal force of the credentials doctrine. See, e.g., People v. Flores, 596 N.E.2d

1204, 1206, 1210 (Ill. App. Ct. 1992) (search under car's hood to determine ownership conducted after driver gave consent and police arrested driver and impounded vehicle); People v. Braan, 437 N.Y.S.2d 388, 389-90 (App. Div. 1981) (search after officer saw gambling records inside car in plain view; conducted as "part of a proper investigation of a traffic violation and a gambling offense"); State v. Bright, 493 P.2d 757, 757-58 (Or. Ct. App. 1972) (search of abandoned car with flat rear tire); Jordan v. Holland, 324 S.E.2d 372, 375, 377-78 (W. Va. 1984) (search of car parked near bank that had just been robbed, with empty gun holster in plain view; probable cause existed to "believ[e] that the vehicle was involved in the robbery"; and "exigency created by the flight of felons" required swift search).

State v. Williams, 648 P.2d 1156 (Kan. Ct. App. 1982), did not involve a search for driving credentials. In that case, a highway patrolman searched a truck cab for the commercial driver's daily log as part of a "spot check[] of pervasively regulated commercial businesses to insure compliance with regulations furnished to them by the state." Id. at 1157, 1162. State v. Byrd, 209 S.E.2d 516 (N.C. Ct. App. 1974), discussed below, involved the application of New Jersey law.

California has a driving credentials exception. A divided California Supreme Court upheld warrantless searches for

driver's licenses and registration in In re Arturo D., 38 P.3d 433, 445-46 (Cal. 2002). See also People v. Webster, 814 P.2d 1273, 1281-82 (Cal. 1991); People v. Martin, 100 Cal. Rptr. 272, 273 (Ct. App. 1972).

Several states reject a driving credentials exception to the warrant requirement. See State v. Branham, 952 P.2d 332, 333 (Ariz. Ct. App. 1997) (holding that, in the absence of probable cause, police officer making legitimate traffic stop may not "conduct a limited search for the vehicle registration card based solely on the driver's failure to produce it"); State v. Bauder, 924 A.2d 38, 51 n.8 (Vt. 2007) (rejecting the view that a driver's failure to produce ownership documents can "establish a reasonable suspicion that the vehicle is stolen and thereby establish the basis for a limited search of the vehicle . . . where such documents are normally stored"); see also Commonwealth v. Silva, 807 N.E.2d 170, 173 (Mass. App. Ct. 2004) ("We are not aware of any legal precedent . . . that would hold constitutionally supportable . . . a police policy for automobile entries and searches to gather ownership documents precedent to towing of a car . . . .").

The majority also cites three federal cases for support. Once again, the decisions involve issues in addition to the driving credentials theory. In United States v. Brown, 470 F.2d 1120, 1121-22 (9th Cir. 1972), the driver illegally possessed

chemical mace in his jacket pocket. Kelly, 267 F. Supp. 2d 5, discussed above, also involved a medical emergency and community caretaking concerns. And the district court in United States v. Lopez, 474 F. Supp. 943, 948 (C.D. Cal. 1979), suppressed an illegal search noting that "[e]ven if the officer's entry to inspect the registration was justified," other aspects of the search were plainly unconstitutional. The court relied on California state case law as support for a limited registration search. Ibid.

The above cases do not reflect a widespread trend for the driving credentials exception for a more fundamental reason. As Professor LaFave explains, referring to Brown and Byrd,

> [t]hese decisions are in error. Search of the car should be permitted only when the failure to produce the registration and the other relevant circumstances establish probable cause that the car is stolen. Absent such evidence, further detention for investigation would be justified if the Terry reasonable suspicion test was met.
>
> [5 LaFave, § 10.8(a) n.33 (5th ed.).]

Both Brown and Byrd turn on facts that are similar to what happened here. In Brown, the police stopped a car for an illegal left-hand turn. 470 F.2d at 1121. The driver "shrugged his shoulders" when asked about the vehicle's registration. Id. at 1122. An officer then set out to conduct a limited search above the visor and around the steering column for the car's

registration -- and saw a sawed-off shotgun on the floorboard. Ibid.

Byrd is a 1974 North Carolina case that involved a stop on the New Jersey Turnpike. 209 S.E.2d at 517. A State Trooper stopped a car for a license and registration check. Ibid. After the driver "failed to produce a registration certificate," "the officer searched the glove compartment." Ibid. He found a pistol. Ibid. A later inventory search turned up stolen jewelry. Ibid.

The defendant was tried and convicted in North Carolina. Ibid. On appeal, a North Carolina appellate panel relied on Boykins and Gammon, as well as a third decision from North Carolina, to uphold the warrantless search. Ibid.

To be clear, Professor LaFave criticized Byrd, which relied on New Jersey's Boykins decision -- the foundation for the credentials theory. According to the eminent treatise, the warrantless search for registration documents should not have been upheld without probable cause to believe that the car was stolen. 5 LaFave, § 10.8(a) n.33 (5th ed.).

C.

In addition to questions about the driving credentials doctrine's legal foundation, its scope is unclear and potentially quite broad. The basic principle in question, restated succinctly in Keaton, is that after the police provide

a driver an "opportunity to present his credentials," an officer may conduct a limited search of the vehicle if the driver "is unable or unwilling to produce his registration or insurance information." 222 N.J. at 442-43.

If an anxious driver fumbles while searching for her registration during a stop, can an officer conduct a search because she was "unable" to produce the document? Suppose she fails to come up with the requested documents for two minutes -- more than the amount of time that elapsed in this case. Can an officer order her out of her car and search the vehicle under the credentials exception? We do not know. But countless drivers who commit some type of traffic offense and are pulled over, see Carty, 170 N.J. at 640-41, may be subjected to a warrantless search for credentials. That is especially troubling today, when officers can instantaneously verify relevant information about a vehicle's ownership and registration without a hard copy of a registration document -- something that was not possible in 1967, when Boykins was decided.

IV.

The dicta in Boykins, of course, dealt with the ability of officers to retrieve the hard copy of a vehicle's registration and an insurance card. Yet technology has dramatically changed the nature of motor vehicle stops since that decision.

Officers in the field today have access to much more information than they did in 1967. Dispatchers can now search advanced computer databases and gather information instantaneously. In this case, for example, dispatch confirmed within seconds that the SUV was a rental from Hertz, that it had not been reported stolen, that defendant's driver's license was valid, and that he had no outstanding warrants.

Beyond that, for more than twenty years, police vehicles have been equipped with mobile data terminals (MDTs) that also have access to a wealth of information. The Court in State v. Donis described what was available in 1998 to an officer in the field:

> [A] mobile data terminal (MDT) consists of a screen and keypad that are linked to the computerized databases of the New Jersey Division of Motor Vehicles . . . . Information may be retrieved through the MDT by entering a license plate number.
>
> When an officer enters a vehicle's license plate number, the initial "DMV plate" screen shows the expiration date of the registration for that vehicle; the status of the vehicle, including whether it has been reported stolen; the registrant's name, address, date of birth, and driver's license number; the year, make, model, license plate number, and color of the vehicle; the vehicle identification number; the number of owners of the registered vehicle; the maximum number of passengers for a passenger vehicle; the gross weight for a commercial vehicle; and the length of the registered vehicle if it is a boat.

> When an officer accesses a DMV plate screen, the MDT then automatically runs a search of the registrant's name and displays the results on the "DMV name" screen. The DMV name screen shows the registrant's name and the number of names that match that search name; the registrant's driver's license number and date of birth; a code for the registrant's eye color; a code for whether the license or registration is suspended; whether the license is a photo or non-photo license; the licensee's address, social security number, date of birth, weight, and height; the term of the license; the license expiration date; the number of points accrued against the license; and the number of endorsements and restrictions on the license.
>
> . . . .
>
> In addition to using the license plate number, an officer can also enter the vehicle identification number to determine whether state or federal records indicate that the car has been reported stolen. By entering the licensee's name, an officer can further learn whether that individual is wanted by state or federal authorities.
>
> [157 N.J. 44, 46-47 (1998).]

No doubt, there have been advances since 1998, which are not contained in the record.

The State has not identified anything in the physical registration document that is not revealed by the MDT. There is a simple way to assess that question. Look at a hard copy of a vehicle registration and see what it discloses: the license plate number and vehicle identification number (both of which are visible from the exterior of the car and trigger the information listed above); the expiration date of the

registration; the year, make, model, and color of the vehicle; the maximum number of passengers; the registered driver's name and address; and the fee paid.

What precisely is needed from a hard copy of the registration that officers cannot learn from the MDT? Thanks to developments in technology, the answer is less clear today than it was in 1967. It is even less clear why a warrant exception for driving credentials is needed, when the same information can be obtained without compromising constitutional rights.

In a nod to technology, the majority adds a limiting principle: that a warrantless search for credentials cannot be justified when "the officer can readily determine that either" the driver or passenger "is the lawful possessor." Ante at ___ (slip op. at 32). Because officers on duty nearly always have access to MDTs or a dispatcher, that principle should logically mean that few warrantless searches for credentials could ever be justified.

V.

What is particularly troubling in this case is not defendant's failure to hand over a registration document or insurance card; it is his behavior beforehand. He did not stop when a police car pulled behind him with its emergency lights and siren on, and drove on for a half mile, changing lanes without signaling. Defendant's conduct showed disrespect for

the police and posed a danger to the officer and other drivers on the road.

The officers, in turn, had a number of options. They could and did order defendant out of the car to frisk him. Defendant was unarmed. At that point, the officers were in full control of the scene. They might have tried to defuse the situation and question the driver further, as officers routinely and capably do.

The police could have also charged defendant with eluding and arrested him. See N.J.S.A. 2C:29-2(b) ("Any person, while operating a motor vehicle on any street or highway in this State . . . who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle . . . to a full stop commits a crime . . . ."). To the extent the officers had a continuing concern for their safety, as the State argues, they could have taken defendant into custody rather than allow him to reenter the car on his own.

The police could have then impounded defendant's car and conducted an inventory search.[4] See South Dakota v. Opperman,

[4] By contrast, as noted earlier, "[r]outine or simple motor vehicle offenses will usually warrant only the issuance of a summons." Lark, 163 N.J. at 296. The majority overlooks that distinction. See ante at ___ (slip op. at 38). Impoundment would only have been possible in this case if defendant had been arrested for eluding.

428 U.S. 364, 369-72 (1976). That would have been more of an imposition on defendant Terry, of course. But is it preferable, instead, to curtail the protections of the warrant requirement when there is no probable cause either to arrest the driver or to believe that evidence of a crime can be found in his car?

The troubling facts of this case should not propel a legal standard -- an exception to the warrant requirement -- that will apply to more routine traffic stops as well. What may seem reasonable on a superficial level in this case may not appear that way in the next. In the case of a more minor traffic violation, like driving a few miles over the speed limit, if a driver produces a valid license but no registration, and the car is not reported stolen, the motorist can be issued a summons and allowed to leave. From both a legal and practical perspective, a credentials search is not warranted. The offense is complete, and no additional search for documents is necessary or appropriate. See Lark, 319 N.J. Super. at 626-27.

To be clear, this is not a critique of the officers, who tried to apply the law as they understood it. It is a critique of a theory that permits law enforcement to search a vehicle without probable cause, when officer safety is not an issue, and when there is no legitimate law enforcement need for the credentials sought.

To the extent vehicles pose special concerns, the law already has an automobile exception to address them. We do not need a milder version of the automobile exception and the protective sweep doctrine for cases in which there is no probable cause to search and no specific and articulable safety concerns that would satisfy Long and Lund.

VI.

The United States Supreme Court has never recognized a driving credentials exception to the warrant requirement. As the majority correctly notes, this Court can address, in the first instance, a federal question that the nation's highest court has not decided. See Robb v. Connolly, 111 U.S. 624, 637 (1884). But in light of New Jersey's long and proud tradition of guaranteeing stronger protections for civil liberties than the Federal Constitution provides, it is unusual for the Court to cut back on privacy rights in a way that federal law does not explicitly require.

Nearly a quarter century ago, this Court criticized "judicially-created" exceptions to the warrant requirement that sidestep the need to show probable cause. The Court's words bear repeating:

> Because probable cause "is the constitutionally-imposed standard for determining whether a search and seizure is lawful" and "occupies a position of indisputable significance in search and

> seizure law," vehicle searches sustainable under the "automobile exception" and based on probable cause stand on firmer ground than those that depend for their validity on a judicially-created exception to the warrant requirement, such as the Belton rule, which requires no proof of probable cause.
>
> [State v. Pierce, 136 N.J. 184, 214 (1994) (citation omitted) (adopting stricter standard for warrantless automobile searches incident to arrest than federal standard set forth in New York v. Belton, 453 U.S. 454 (1981)).]

Those thoughts ring true today as well.

The Federal and State Constitutions favor searches conducted with a warrant. Exceptions to that requirement should be "jealously and carefully drawn." Jones, 357 U.S. at 499. I would not weaken those core constitutional principles and the rights they protect. I therefore respectfully dissent.