State v. Curtis L. Gartrell (A-31-22) (NJ App. 2024)

In this appeal, the Court considers whether defendant Curtis Gartrell, who fled from police outside of Newark Penn Station -- leaving behind a suitcase containing handguns, ammunition, illegal narcotics, and cash -- abandoned the suitcase and is therefore without standing to challenge law enforcement's warrantless search of the bag.

During the evening of November 6, 2019, an individual at Newark Penn Station reported to New Jersey Transit Police Officers that he had been punched by defendant. As officers spoke to defendant, there was a blue rolling suitcase near him. The officers ran a search for outstanding warrants against defendant. While waiting for the results of the record check, defendant had several phone conversations with a person he referred to as "Spoon" and "bro," who defendant claimed was coming to pick him up.

Meanwhile, the results of the record check revealed an active warrant for defendant. Officers informed defendant of the warrant and advised him that they intended to place him under arrest. Defendant asked the officers whether he could first give his luggage -- the blue suitcase -- to "Spoon," but they declined the request, stating they would first take defendant into custody. Defendant called out, "'Spoon,' will you get my clothes, bro," and turned as if preparing to be handcuffed; he then fled from the officers on foot, leaving the blue suitcase unattended on the sidewalk. Officers apprehended defendant after a brief foot chase.

While other officers chased and arrested defendant, one officer secured and searched the suitcase at the entrance of the station, revealing the contraband. Defendant was charged with possessory offenses and resisting arrest.

Defendant filed a motion to suppress evidence recovered from the warrantless search of the suitcase. The trial court granted the motion, reasoning that defendant did not flee police because he wanted to discard the suitcase or relinquish his interest in it. The trial court also rejected the State's argument that the search incident to arrest exception applied. The State appealed, and the Appellate Division reversed, holding that defendant had abandoned the suitcase. The Court granted leave to appeal.

HELD: Defendant's possessory or ownership interest in the suitcase ceased when he fled police outside Penn Station and deliberately left his suitcase behind in a public place with no evidence of anyone else's interest in the bag. Because the State has demonstrated by a preponderance of the evidence that the suitcase was abandoned, defendant is without standing to challenge its seizure and search.

1. When property is abandoned, a defendant has "no right to challenge the search or seizure of that property." *State v. Johnson*, 193 N.J. 528, 548 (2008). Property is abandoned only if "(1) a person has either actual or constructive control or dominion over property; (2) he knowingly and voluntarily relinquishes any possessory or ownership interest in the property; and (3) there are no other apparent or known owners of the property." *State v. Carvajal*, 202 N.J. 214, 225 (2010). The State bears the burden of proving that property was abandoned by a preponderance of the evidence. In *Johnson*, the Court held that the defendant had not surrendered his standing to challenge the search of a bag solely because he had disclaimed ownership, given that the bag was in an apartment with five occupants and could have belonged to any one of them. 193 N.J. at 549-50. The Court observed that "the police might still have easily determined its owner." Id. at 550. In *Carvajal*, the Court upheld the search of an unattended bag left on a bus. 202 N.J. at 218, 230. There, the bag was abandoned because it was "left in a public place or on a public carrier" with "no apparent owner," and the "police did not search the bag until all apparent owners had disclaimed any possessory interest in the property." Id. at 225-26, 229-30. (pp. 11-14)

2. Here, no one disputes that defendant fled police to avoid a lawful arrest, knowing that "Spoon," if such a person existed -- the Court notes that the defense was unable to confirm "Spoon's" identity -- did not yet have possession of the suitcase. The act of fleeing to avoid a lawful arrest in a public place demonstrates defendant's intent to place as much distance as possible between himself and the property left behind. When defendant ran from police in the heavily trafficked area on the sidewalk outside of Penn Station, without any indication that he intended to return, he abandoned the suitcase in a public place. And, unlike when there are a finite and fixed number of potential owners as in *Carvajal* and *Johnson*, the police cannot be expected to identify and canvass everyone at or near a major transportation hub to determine who, if anyone, might have a possessory interest in a bag deliberately left behind in a public place. Having thus concluded that the suitcase was abandoned, and defendant is without standing to challenge its seizure and search, the Court does not reach the issue of whether police conducted a constitutionally valid search incident to arrest. (pp. 15-17)

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MATTHEW J. PLATKIN
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2024-02

TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Matthew J. Platkin, Attorney General

DATE: April 17, 2024

SUBJECT: **Expanding the Timeframe for Multidisciplinary Response to Victims of Sexual Assault**

New Jersey has stood at the forefront of providing services to adolescent and adult victims of sexual violence. As an early adopter of the Sexual Assault Nurse Examiner (SANE) and Sexual Assault Response Team (SART) models of care, in 1997, New Jersey launched pilot programs in several counties providing sexual assault forensic exams to survivors of sexual violence. Due to the overwhelming success of the pilot programs, in 1998, New Jersey was the first state in the nation to legislate the establishment of a SART in every county. This multidisciplinary victim-centered approach ensured every victim in the state was afforded access to coordinated trauma-informed services from the moment the victim reached out for help. Based on scientific limitations existing at the time, the coordinated SART response was initially limited to the first seventy-two hours after an incident of sexual violence had occurred but was later expanded to five days as forensic and social sciences research supported benefits beyond the acute phase of an assault.

As forensic science capabilities evolve, so must our law enforcement guidance. Expanding the SART standard activation and response time further is well supported by research and will provide more victims of sexual violence with an opportunity to access available services. Forensic nurses, sexual violence response advocates, and specially trained law enforcement professionals can better serve victims by utilizing a trauma-informed and victim-centered approach even in situations where the victim has delayed disclosure seven or more days after the incident.

Depending upon several factors related to the nature and extent of the trauma, injuries to skin surfaces including lacerations and bruises may still be visible upon assessment by a forensic nurse well beyond the current five-day limit for forensic medical examinations.[1,2] Further,

[1] Katherine N. Scafide, et al., *Detection of Inflicted Bruises by Alternate Light: Results of a Randomized Controlled Trial*, 65 J. FORENSIC SCI. 1191, 1194–95 (2020).

[2] Jhonatan Tirado & David Mauricio, *Bruise Dating Using Deep Learning*, 66 J. FORENSIC SCI. 336, 343–45 (2021).

extending the forensic examination time frame to seven days for the collection of biological samples for potential DNA analysis is supported by national protocol and best practices.[3,4]

The scientific literature supports conducting a physical examination for identification of injuries and collection of specimens for DNA analysis beyond the five-day timeframe currently in effect in New Jersey. As early as 2008, forensic scientists reported the ability to successfully test post-coital samples using a Y-STR method specifically for the identification of male donor DNA in small or mixed samples.[5] By 2012, multiple sources validated the ability to produce male DNA profiles from post-coital vaginal samples recovered up to nine days after an incident under certain conditions.[6,7]

Offering victims who delay disclosure of sexual violence the opportunity to meet with a forensic nurse examiner and a sexual violence response advocate may improve outcomes for these victims regardless of their decision to report the incident to police.[8,9] If the victim later chooses to pursue police investigation of the incident, well-prepared medical documents, appropriately stored specimens, and photographic images of the examination, will likely improve the potential for successful outcomes of investigation and prosecution.[10]

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law-enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and

[3] OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUST., A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS: ADULTS/ADOLESCENTS 8 (2013), https://www.ojp.gov/pdffiles1/ovw/228119.pdf.

[4] SEXUAL ASSAULT FORENSIC EVIDENCE REPORTING (SAFER) WORKING GRP., NAT'L INST. OF JUST., NATIONAL BEST PRACTICES FOR SEXUAL ASSAULT KITS: A MULTIDISCIPLINARY APPROACH 17 (2017), https://www.ojp.gov/pdffiles1/nij/250384.pdf.

[5] Kathleen A. Mayntz-Press, et al., *Y-STR Profiling in Extended Interval (≥3 Days) Postcoital Cervicovaginal Samples*, 53 J. FORENSIC SCI. 342, 344 (2008).

[6] JACK BALLANTYNE, ET AL., IMPROVED DETECTION OF MALE DNA IN POST-COITAL SAMPLES 66–68 (2012), https://www.ojp.gov/pdffiles1/nij/grants/241298.pdf.

[7] JACK BALLANTYNE, DNA PROFILING OF SEMEN DONOR IN EXTENDED INTERVAL POST-COITAL SAMPLES 55 (2012), https://www.ojp.gov/pdffiles1/nij/grants/241299.pdf.

[8] Jane Lomax & Jane Meyrick, *Systematic Review: Effectiveness of Psychosocial Interventions on Wellbeing Outcomes for Adolescent or Adult Victim/Survivors of Recent Rape or Sexual Assault*, 27 J. HEALTH PSYCH. 305 (2020).

[9] Rebecca Campbell, et al., *The Effectiveness of Sexual Assault Nurse Examiner (SANE) Programs: A Review of Psychological, Medical, Legal, and Community Outcomes*, 6 TRAUMA, VIOLENCE, & ABUSE 313, 318 (2005).

[10] Thaddeus Schmitt, et al., *Qualitative Analysis of Prosecutors' Perspectives on Sexual Assault Nurse Examiners and the Criminal Justice Response to Sexual Assault*, 13 J. FORENSIC NURSING 62 (2017).

the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the directives outlined below.

In accordance with current medical forensic research and technology, the standard SART activation period will be expanded to **seven days** from when the incident is reported to have occurred. In situations where the victim seeks assistance beyond the seventh day but reports continued pain, presence of visible injury, or other extenuating circumstances, the forensic nurse examiner should be consulted to determine the benefit of a sexual assault forensic medical exam up to nine days post assault. In such cases, the sexual assault forensic exam should be conducted.

- ***NOTE: This time period supersedes the time period in A.G. Directive 2018-5***

Other Provisions

1. ***Supersession***. This Directive supersedes any provisions in prior guidance contrary to those found herein.

2. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

3. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.

4. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.

5. ***Effective date***. This Directive shall take effect immediately and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2024-03

TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Matthew J. Platkin, Attorney General

DATE: June 20, 2024

SUBJECT: **Investigatory Use of Documentary Records and Physical Blood Samples Maintained by the Newborn Screening Program**

I. Introduction and Overview

The Newborn Screening Program is an important public-health program designed to detect unseen illnesses and connect newborn infants with comprehensive healthcare and services. See N.J.S.A. 26:2-110, -111; N.J.A.C. 8:18-1.12. New Jersey law requires that every baby born in the State must have a bloodspot screen taken within 48 hours of birth to test for various conditions that can cause serious health problems or even death, unless a parent or guardian objects on religious grounds. See N.J.S.A. 26:2-110, -111; N.J.A.C. 8:18-1.12. The Program is critical to helping medical professionals, parents, and guardians quickly detect a variety of congenital disorders, and to helping prevent future problems related to those conditions through early diagnosis and treatment. It also provides universal access to screening for all babies, including those who otherwise might not have sufficient access to care. See N.J.S.A. 26:2-110.

Crucial to the success of the Program is that information gathered through it is kept private. N.J.S.A. 26:2-111; N.J.A.C. 8:18-1.13. And given the sensitivity inherent in this Program, law enforcement has almost never sought to use this material as part of an investigation—indeed, the Department of Health in 2022 revealed that only five grand jury subpoenas had been received (from four law enforcement agencies) over the preceding five years, an average of one per year. But even the infrequent use of information gathered via a public-health program can impact the public's trust in such programs, which can in turn jeopardize public safety and public health. Therefore, in the interests of bolstering public confidence in this medical-screening program, this Directive adds new and important limits to ensure that law enforcement agencies will only seek such information in genuinely exceptional circumstances. It does this by imposing new approval requirements for the rare cases in which law enforcement seeks to obtain newborn "bloodspot" information and designates the legal process this Office will require all law enforcement agencies to follow going forward.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law-enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the directives outlined below:

II. Process and Approval Requirements

A. Requirements

Before seeking release of documentary records or physical bloodspots maintained by the Newborn Screening Program, a law enforcement agency shall first seek approval from the **Director of the Division of Criminal Justice**. Requests for approval must be made in writing and must explain why this is an exceptional circumstance that necessitates seeking information from the Program and why less intrusive means will not suffice. In keeping with past practice, a request for such information regarding an individual who is not the victim in the case should be exceedingly rare.

B. Appropriate Legal Process

To bolster public confidence in the newborn screening program, any documentary records and/or physical bloodspots maintained by the Newborn Screening Program shall be obtained only by one of the following forms of appropriate legal process based on the facts presented:

1. a court-issued Dyal subpoena rather than grand-jury subpoena, see State v. Dyal, 97 N.J. 229, 232 (1984) ("[T]o obtain the results of a blood test protected by the patient-physician privilege, the police should apply to a municipal court judge for a subpoena duces tecum."), abrogated on other grounds by State v. Adkins, 221 N.J. 300, 316 (2015); or

2. a search warrant based on probable cause, see U.S. Const. amend. IV.; N.J.S.A. Const. art. 1, ¶ 7; or

3. an administrative subpoena (or appropriate court process) issued in a missing- persons or unidentified-body case under N.J.S.A. 52:17B-9.7 to -9.8d.

III. Other Provisions

A. Non-enforceability by third parties. This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

B. Severability. The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent

jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.

C. Questions. Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.

D. Effective date. This Directive shall take effect immediately and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. All law-enforcement agencies are encouraged to take any action they deem necessary related to training on this Directive.

State v. Mary Mellody (A-1087-22) (NJ App 2024)

In this appeal we consider the circumstances in which a police officer may enter a suspect's residence in connection with a drunk or careless driving investigation. Under the Fourth Amendment and its analogue, Article I, Paragraph 7 of the New Jersey Constitution, homes are accorded heightened protections. While police have the authority to perform various "community caretaking" functions—such as determining whether a suspected drunk driver needs medical attention—they may not make a warrantless entry into a suspect's home, including the garage, to execute an investigative detention without consent or exigent circumstances.

Defendant Mary Mellody appeals from a November 18, 2022 Law Division order affirming, on *de novo* review, the denial of her motion to suppress evidence and her municipal court convictions for driving while intoxicated (DWI) and careless driving. Defendant contends there were insufficient grounds to initiate a DWI stop because the officer had not personally observed her alleged erratic driving. She also contends the results of the field sobriety tests should have been suppressed as fruits of the officer's unlawful entry into her garage at her home.

After carefully reviewing the record in light of the governing legal principles, we conclude the officer had reasonable and articulable suspicion to initiate a DWI stop based on a 9-1-1 call reporting defendant's erratic driving.

However, we also conclude the officer unlawfully entered defendant's garage to detain her. Viewed under an objective standard, the record shows the officer did not render emergency aid justifying the warrantless entry under the exigent circumstances exception. Rather, the officer conducted what might be characterized as a routine investigation of the suspected DWI and careless driving offenses, approaching the vehicle in the garage as if it were stopped on the side of a public road, and administering standard field sobriety tests **without ever inquiring whether defendant needed medical attention.**

Because the State failed to establish exigent circumstances, entering the garage to detain defendant was unlawful, and the fruits of the ensuing investigation must be suppressed. Therefore, we reverse and vacate defendant's DWI conviction, since the finding she was intoxicated depends on the field sobriety tests and observation of her demeanor made after the officer unlawfully entered the garage. We remand for the Law Division judge to determine whether the careless driving conviction—which is predicated on the way defendant drove into her garage—can be sustained based on information learned before the officer unlawfully crossed the threshold of defendant's home.

I.

We discern the following facts and procedural history from the record. On November 1, 2019, defendant went to a tavern in Hardyston, where she saw her neighbor. Defendant and the neighbor left the tavern separately around 10:30 p.m. Around 10:44 p.m., Hardyston Police received a 9-1-1 call reporting an erratic driver in the Crystal Springs development area.

The caller reported that the driver was swerving and going over curbs and described the car as a black Jeep SUV. The caller provided the Jeep's license plate number.

An officer was dispatched to the Jeep's registration address in an attempt to locate the erratic driver. Upon his arrival, the officer observed a Jeep in the driveway matching the description from the 9-1-1 call. The Jeep's brake lights were illuminated.

The officer activated his overhead lights to effectuate a stop. The Jeep moved forward into the attached garage and stopped after the officer heard a "bang." He surmised the Jeep struck a refrigerator located in the one-car garage, which he characterized as "tight."

The officer entered the garage and saw defendant sitting in the driver's seat. At the suppression hearing, the officer testified he asked defendant "what she was doing, why she didn't stop when [he] activated [his] lights." He also "asked her something in relation to why she crashed into her fridge." He noticed defendant's movements were "fumbled" and "slow" and that her eyes were "watery" and "bloodshot red." The officer smelled alcohol emanating from the vehicle.

The officer instructed defendant to turn off her engine and exit the vehicle so he could administer field sobriety tests. While performing the "walk and turn" test, defendant lost her balance and took an incorrect number of steps. She was also unable to perform the "one-leg stand" test.

Defendant was taken into custody and transported to the police station. She was charged with DWI, N.J.S.A. 39:4-50, careless driving, N.J.S.A. 39:4- 97, and failure to comply with the direction of a police officer, N.J.S.A. 39:4 - 57.

State v. Andrew Higginbotham (A-57-22) (NJ Sup. 2024)

The Court considers whether subsection (c) of the definition of "portray a child in a sexually suggestive manner" in N.J.S.A. 2C:24-4(b)(1) is substantially overbroad in violation of the First Amendment to the United States Constitution.

Defendant Andrew Higginbotham was charged with sixteen counts of endangering the welfare of a child under subsection (c), which makes it a crime "to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value." N.J.S.A. 2C:24-4(b)(1). The charges arose from photographs he had distributed of a five-year-old girl. Defendant superimposed sexually explicit, obscene text over the photos. He also distributed a photo of his clothed but aroused penis next to photos of the child, superimposed with sexually explicit, obscene text. In all photos, the child was clothed.

Defendant moved to dismiss the indictment, contending that subsection (c) was unconstitutionally vague and overbroad, either on its face or as applied to him. The trial court denied the motion. The Appellate Division reversed, holding that all three of the definitions of "portray a child in a sexually suggestive manner" set forth in N.J.S.A. 2C:24-4(b)(1) -- i.e., subsection (c), which defendant had challenged, but also subsections (a) and (b), which he had not -- were unconstitutionally overbroad because they criminalized images that constituted neither child pornography nor obscenity.

In 2021, the Brooklawn Police Department learned that defendant Andrew Higginbotham had a journal with a photo of a young girl on the cover. Written on top of the photo were the words "[c]**k in her little mouth" and "[c]*m on her face." In an interview with police, defendant admitted that the journal was his, and said that he used it as a way "to express himself."

Defendant stated that the photo on the journal was of his friend's daughter "Christine,"1 who was born in 2008. Detectives from the Camden County Prosecutor's Office interviewed Christine; she did not allege sexual abuse. Detectives also interviewed Christine's mother. She stated that she had been friends with defendant years earlier, but the friendship had ended, and they were no longer in touch. However, about a month prior to the start of the investigation, she averred, defendant sent her a Facebook message.

Detectives obtained a warrant to search defendant's Facebook accounts.

The search revealed that in February 2021, defendant distributed images of Christine from when she was five years old. The images included: (1) a photo of Christine wearing a black-and-white-striped shirt and pink tutu skirt; (2) a video with several photos of Christine and unknown girls wearing bikinis; and (3) a photo of Christine wearing jeans and a shirt with a smiley face emoji, kissing her sister. On top of each photo, defendant superimposed sexually explicit text that he concedes is obscene. He then sent the images to different Facebook users.

Defendant also sent a Facebook user a collage of several photos, consisting of a photo of his clothed but aroused penis next to photos of Christine in the black-and-white-striped shirt and pink tutu, a black shirt with a spider web on it, and a blue shirt with a birthday girl ribbon on it. On top of the photo collage, defendant again superimposed sexually explicit text that he concedes is obscene. Defendant sent a similar photo collage, again superimposed with sexually explicit, obscene text, to other Facebook users as well.

Some of the obscene text that defendant superimposed over the photos graphically described violent sexual acts that he wanted to perform on Christine or wanted Christine to perform on him; others described defendant "wanting to molest" Christine. One photo was superimposed with defendant's 264-word sexual fantasy. In all photos, Christine was clothed.

In a second interview with police, defendant admitted to taking photos of Christine when he was friends with her mother years earlier and downloading additional photos of Christine as a young child from her mother's Facebook page. He admitted to superimposing obscene text over the photos of Christine and sending those new images to Facebook users he met in group chats about sex. Defendant confirmed that he sent the images "as satisfaction and pleasure for himself" and to show others what he had. Although he admitted that he masturbated to the images, defendant denied ever masturbating while physically near Christine.

The indictment alleged that defendant portrayed a child "in a sexually suggestive manner by otherwise depicting a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political or scientific value." That language mirrors subsection (c) of the definition of "portray a child in a sexually suggestive manner" found in N.J.S.A. 2C:24-4(b)(1) (hereinafter, "subsection (c)").

Defendant moved to dismiss the indictment. He contended that subsection (c) was unconstitutionally vague and overbroad in violation of the First Amendment to the United States Constitution, either on its face or as applied to him. According to defendant, the photographs were "innocuous" in that they were "of a fully clothed child, not suggestively posed," and he then "superimposed" them with his own "personal sexual fantasies" without causing harm to Christine. Defendant also asserted that Christine was not "exploited by the production process since the photos themselves are not pornographic or sexually suggestive."

In a published opinion, the Appellate Division reversed. *State v. Higginbotham*, 475 N.J. Super. 205 (App. Div. 2023). It held that all three of the definitions of "portray a child in a sexually suggestive manner" set forth in N.J.S.A. 2C:24-4(b)(1) -- i.e., subsection (c), which defendant had challenged, but also subsections (a) and (b), which he had not -- were unconstitutionally overbroad because they criminalized images that constituted neither child pornography nor obscenity. Id. at 233.

As the Appellate Division explained, the definitions went beyond child pornography because they "include[d] images of children who are not engaged in sex acts or whose genitals are not lewdly displayed."

The Appellate Division pointed out that the three definitions of "portray a child in a sexually suggestive manner" in N.J.S.A. 2C:24-4(b)(1) do not "require the child's genitals be visible in the image or the child be engaged in any type of sexual activity." Id. at 234. According to the Appellate Division, the definitions could thus criminalize: (1) "[a] picture taken on a public beach, which includes children or teenagers in swimsuits, applying sunscreen on each other or themselves"; (2) "photographs taken for telehealth medical diagnostic purposes -- like a rash or other skin condition"; and (3) "[d]epictions of certain types of sporting events -- such as wrestling, cheerleading, gymnastics, or track and field." Ibid.

The statutory definitions also did not proscribe obscenity because they did not incorporate all three elements of the Miller v. California obscenity standard, which the Appellate Division held was required "to comply with the First Amendment."

The Appellate Division rejected the State's argument that the images defendant created constituted "morphed" child pornography, pointing out that Christine's "photographic image was not edited at all"; instead, "[d]efendant simply added text to her picture." Id. at 238. And although defendant's words "paint[ed] a mental picture of a child engaged in a sex act . . . [h]is words alone created [that] mental picture." Ibid.3 The court acknowledged "the potential for reputational and emotional harm to" Christine, but found that defendant's images were "not a record of past [child] abuse, even fake abuse." Ibid.

Prior to February 2018, "an item depicting the sexual exploitation or abuse of a child" was defined only as an image that "depicts a child engaging in a prohibited sexual act or in the simulation of such an act." N.J.S.A. 2C:24- 4(b)(1) (2017). In 2017, the Legislature amended N.J.S.A. 2C:24-4 to expand the definition. *S. L. & Pub. Safety Comm. Statement to S. 3219 1* (June 15, 2017). Mindful of "changes in the child pornography industry which are not adequately addressed by current law" and the lack of statutory coverage for "images that depict nearly naked, suggestively-posed, and inappropriately sexualized children," the Legislature expanded the definition of "item depicting the sexual exploitation or abuse of a child" to include an image that "portrays a child in a sexually suggestive manner." Ibid. This is what the parties refer to as the *Child Erotica Amendments*.

The amended definition of "item depicting the sexual exploitation or abuse of a child" is now: "a photograph, film, video," computer image, or "any other reproduction or reconstruction which: (a) depicts a child engaging in a prohibited sexual act ("Prohibited sexual act" includes, among other things, "[n]udity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction," and "[a]ny act of sexual penetration or sexual contact as defined in N.J.S.A. 2C:14-1." N.J.S.A. 2C:24-4(b)(1)) or in the simulation of such an act; or (b) portrays a child in a sexually suggestive manner." N.J.S.A. 2C:24-4(b)(1) (emphasis added).

The statute then defines "portray a child in a sexually suggestive manner" as: (a) to depict a child's less than completely and opaquely covered intimate parts, as defined in N.J.S.A. 2C:14-1 (Under N.J.S.A. 2C:14-1(e), "intimate parts" means "sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person."), in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or (b) to depict any form of contact with a child's intimate parts, as defined in N.J.S.A. 2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or (c) to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value. [N.J.S.A. 2C:24-4(b)(1) (emphasis added).]

As is clear from the text, subsections (a) and (b) of the definition use nearly identical language to criminalize any depiction of "a child's less than completely and opaquely covered intimate parts" or "any form of contact with a child's intimate parts," whereas subsection (c) uses different language to criminalize other depictions of children "for the purpose of sexual stimulation or gratification of any person."

With this background in mind, we hold that subsection (c) is unconstitutionally overbroad. We do not reach whether subsection (c) is vague, and we do not reach the validity of subsections (a) or (b). We therefore affirm the Appellate Division's decision as modified.

We agree with defendant and the Appellate Division that subsection (c) is unconstitutionally overbroad because it criminalizes a substantial amount of material that is neither obscene nor child pornography, and therefore "does not fall outside the protection of the First Amendment." *Free Speech Coal*., 535 U.S. at 251.

Because we hold that subsection (c) is substantially overbroad, we do not reach the question of vagueness.

Similarly, we agree with the State that defendant "enjoys no First Amendment right" to combine pictures of Christine with obscene language and distribute them over the Internet. Defendant agrees with this point as well. He expressly concedes that he "could be prosecuted under New Jersey's obscenity statute." While defendant can be constitutionally prosecuted under New Jersey's obscenity law, he cannot be prosecuted under a different law that is unconstitutionally overbroad.

The judgment of the Appellate Division is affirmed as modified, and the matter is remanded to the trial court for further proceedings consistent with this opinion.

State v. Kevin B. Boone (A-3503-21) (NJ App. 2024)

On a November evening in 2019, a canine officer was sitting in the Vineland police station watching the video feed from private surveillance cameras positioned around the building and parking lots of a nearby motel.

The officer testified the motel was "a known spot for, you know . . . drug dealing, overdoses, prostitution out of there, fights, shots fired calls, that type of stuff."

A few minutes before midnight, the officer saw a GMC Yukon pull into the parking lot and watched while the driver, later identified as defendant Boone, got out and went up one of the outdoor staircases to a room on the second floor. According to the officer, Boone "was in the room maybe two minutes and then came right out and left again." The officer didn't see anything in Boone's hands going in or out of the room, didn't know Boone, wasn't surveilling the room Boone entered, and didn't recall sending a patrol unit over to investigate anything that might have been going on in the room Boone visited. Instead, believing Boone "was there to either purchase . . . or sell narcotics" based on his "training and experience," the officer radioed a detective stationed nearby to "[s]top the motor vehicle." The officer then collected his dog and left the building to attend the stop.

The detective testified he was in a parking lot near the intersection of Landis Avenue and Delsea Drive when the canine officer alerted him to the Yukon. The detective spotted the vehicle and saw it go through the intersection traveling east on Landis. In response to questioning by the prosecutor, the detective testified the canine officer "alerted me to some observations he made. I followed the vehicle, observed a Title 39 violation, which was the reason I conducted the stop."

Under further questioning, the detective testified the canine officer "informed me that he had reasonable suspicion to believe [the Yukon driver] was engaged in narcotic activity." The detective admitted he and the canine officer "were looking for people involved in narcotic activity," and the canine officer had provided the detective with a description of the Yukon so he could "go make the stop." According to the detective, after receiving the radio transmission from the officer, it "was my intention to stop the vehicle." Asked by the prosecutor whether he formed that intention before or after he saw the Title 39 violation, which was the Yukon crossing the yellow line on a two-lane road, the detective replied: "[I]t was a combination of both."

The detective testified he followed the Yukon for about four tenths of a mile on Landis before it turned left onto North West Avenue, a two-lane road with a twenty-five miles per hour speed limit. According to the detective, he saw the Yukon "crossing the yellow line" as it traveled on North West. There was very little traffic owing to the hour and the "inclement weather." As the vehicle approached West Park Avenue, which is about another four tenths of a mile from where the Yukon turned off Landis, the detective called in the stop, activated his emergency lights to signal the driver to pull over and turned on his body worn camera. According to the detective, the traffic was very light, and it was dark and raining.

The detective got out of his car a minute after he called in the stop. The canine officer arrived at nearly the same time. The detective stood by the passenger window and advised Boone that "one reason" he stopped him was because the Yukon was "crossing the yellow this side of the road," to which Boone responded: "Oh!" When the detective asked Boone whether he "realize[d] that," Boone replied "Uh-uh-huh." The transcript thereafter notes "simultaneous speech" and Boone saying, over an indiscernible interruption, "I might have been in . . . here sitting here talking and. ." The detective followed up by asking: "You were talking? Weren't really paying attention too much?" Boone responded "Probably," to which the detective replied "Okay. No problem."

While the detective spoke to Boone and his passenger, the canine officer stood at the driver's door looking into the car, and he obtained Boone's license and registration. Boone told the detective the couple was headed home with groceries from the nearby Walmart, and the detective observed groceries in the back of the Yukon. When asked if he'd been anywhere else, defendant told the detective he'd stopped at the motel "for a split second" to talk with a friend there.

Boone was cooperative, and neither officer noticed any impairment on his part or any indication of drugs in the Yukon. Notwithstanding, the detective asked both Boone and his passenger to step out of the vehicle. The detective read Boone his Miranda rights. He also told Boone the officers had watched him at the motel, a high crime area with "a lot of drug and narcotic activity," and thus the canine officer was going to run the dog "around the car." The detective did not conduct a pat-down search of Boone after removing him from the Yukon. The detective testified he had no basis to believe Boone was "armed and dangerous" and thus "no reasonable articulation to pat him down."

While the canine officer was conducting the car sniff, the detective checked Boone and his passenger for any open warrants, finding none. When the dog alerted to the smell of narcotics in the Yukon, Boone was arrested and handcuffed. A thorough search of his person revealed plastic bags of suspected cocaine and heroin in his waistband. A further search of the Yukon revealed a black bag in the back of the SUV. Inside, in addition to papers belonging to Boone, was a can of brake fluid. The can, which the officers testified had a false bottom, contained additional drugs.

Boone and his passenger were transported to the police station. The detective wrote out the traffic ticket for "unsafe lane change," N.J.S.A. 39:4 - 88(b), and Boone was detained on a complaint/warrant on various drug charges. His passenger was released on a summons and provided the keys to the Yukon, which had been parked, with Boone's permission, in a lot close to where he had been stopped.

Defense counsel's cross-examination of the detective centered on the motor vehicle violation. In his report of the incident, the detective wrote he saw the Yukon "swerving in the roadway" and noted it "crossed over the yellow line multiple times as it was traveling northbound on North West Avenue." At the suppression hearing, however, the detective did not testify the Yukon was swerving or moving erratically, and he could recall very little about the violation as evident in the following exchange with defense counsel.

Q. You stated that — in your report at least, that Mr. Boone crossed the yellow line multiple times.

A. Uh-huh.

Q. Which occasioned you to effectuate a motor vehicle stop?

A. Well, that wasn't the sole reason, but it's something I observed.

Q. Okay. And, the — the erratic driving, which you observed, would have occurred entirely on the West Avenue?

A. I wouldn't necessarily call it erratic driving; but, the violation . . . that I observed, yes, was on West Avenue.

Q. Okay. And, I believe that in your report, and if you need your report to refresh your recollection we can certainly provide it to you, that Mr. Boone crossed over the line multiple times.

A. Yes.

Q. How many times is multiple?

A. I don't know off the top of my head. More than once.

Q. Twice?

A. For me to say never would be guessing at this point. I don't recall; I know it was multiple times. There was more than once.

Q. Well, multiple times could be as few as two?

A. It could be; yes, it could.

Q. And, how far over the line did he go?

A. I don't remember how far over the line he went.

Q. It was raining that night?

A. Yes.

Q. It was obviously dark?

A. Yes.

Q. Are you able from looking at your pictures taken of West Avenue to determine where Mr. Boone crossed the yellow line?

A. At this point it would be guessing. If I didn't note it in my report specifically where it occurred, which is very hard to do. As a police officer when you're traveling behind somebody there's a lot going through your head. Not only are you focusing on the vehicle that you're going to stop, you're also listening to the police radio. You're paying attention to all your surroundings, other traffic, the weather conditions. What am I going to do. Is this guy going to try to harm me? Is he going to be polite? Is he going to be cooperative? A lot going on. So, for me to say, specifically, this spot or that spot would be a complete guess. I observed the crossing, but again, I'm not looking to see what's the next intersection, what's the address of this road? So, you know, it's round about somewhere between Landis and Park I observed the crossing.

Q. So, it's your testimony that you have to guess in order to inform the court where the unlawful driving occurred? And, it's also your testimony that the time of the stop listed on the ticket was more of an approximation or guess than an accurate recording?6

A. I wouldn't say it was a guess. I would say that I can't specifically state where he crossed the line. I would — I would — as far as the time, I wasn't looking at the clock. So, I couldn't specifically state it's exactly this time.

The judge, in a very thorough and thoughtful written statement of reasons, denied Boone's motion to suppress. Noting "[t]he entire encounter" between the testifying officers and Boone was captured on their body worn cameras, although "[t]he alleged motor vehicle infraction was not," the judge developed a timeline of the events as the stop unfolded.

The judge found the detective "called in the stop at counter time 5:03:20" and got out of his car to speak with Boone exactly one minute later.

The detective asked Boone to step out of the Yukon at counter time 5:07:28 and stepped to the side of the road at 5:07:50. At 5:10:50, the canine officer asked Boone's passenger to step out of the car. The detective called dispatch for a warrant check at 5:11:40, a little over seven minutes after first speaking with Boone. The canine sniff began at 5:12:16, within eight minutes of the stop and ended two minutes later at 5:14:15, before dispatch advised at 5:14:29 that there were no warrants for either Boone or his passenger. Immediately thereafter, the detective advised Boone the dog had "hit on the car," and that the officers would search him, his car and his passenger. On discovering the plastic bag in Boone's waistband, the detective placed Boone in handcuffs at 5:19:30 and concluded his search of Boone's person six minutes later at 5:25:24.

Although having no doubt based on the testimony of the officers that the subjective reason for the car stop was a narcotics investigation, the judge found the detective credibly testified he'd pulled Boone over after witnessing a traffic offense. Acknowledging the violation was "not captured on a motor vehicle recording or . . . on the body worn cameras," the judge found the detective "testified to the same." The judge found the detective "polite and respectful during the course of his testimony," that he "answered the questions posed directly," and "[h]is body language and demeanor were appropriate to the proceedings."

The judge also noted the video from the detective's body worn camera, although not capturing the violation, revealed the detective stated he'd pulled the Yukon over because it crossed the center line, and Boone tacitly admitted "that it could have occurred." Finding "[t]he objective reason behind the motor vehicle stop was for the violation of our motor vehicle laws," the judge concluded the stop was "constitutionally permissible."

And although finding the officers were without reasonable suspicion to prolong the stop for the dog sniff, noting Boone was "polite and cooperative," was not known to the officers, did not appear to be under the influence, that neither he nor his passenger made any furtive movements, and that the officers didn't see or smell contraband or witness a drug transaction or anything in Boone's hands at the motel, the judge found the law was clear the officers didn't need reasonable suspicion here because the sniff did not extend the stop. See *State v. Dunbar*, 229 N.J. 521, 538-39 (2017).

The judge also found the detective didn't need to call or wait for a canine unit to arrive because the canine officer was on the scene before the detective had even finished speaking to Boone and obtaining his credentials. The sniff commenced within eight minutes of the stop and took only two minutes to complete. The judge found it immaterial that the detective hadn't written the ticket until he'd returned to the stationhouse, as the sniff did not extend the time "that would have reasonably been required to effectuate the purposes of the stop."

The judge was also satisfied the positive indication from the dog provided probable cause for defendant's arrest, see *State v. Cancel*, 256 N.J. Super. 430, 433-34 (App. Div. 1992), and his ensuing search was thus a lawful incident thereto, see *State v. Dangerfield*, 171 N.J. 446, 461 (2002).

Finally, the judge found the dog's indication of the odor of narcotics gave the officers probable cause to search the Yukon pursuant to *State v. Alston*, 88 N.J. 211, 230-31 (1981). The judge did not consider whether the actions of the officers "giving rise to probable cause were prompted by circumstances that were 'unforeseeable and spontaneous,' as required under *Witt*, 223 N.J. at 447-48." *Smart*, 253 N.J. at 159.

Applying those principles here, we note we have no quarrel with the trial court's factual findings. The facts are undisputed. We disagree about what those facts mean for the constitutionality of this stop. Specifically, we conclude the trial court erred in finding the State put forth facts sufficient to establish the detective had reasonable articulable suspicion to stop Boone for failing to keep the Yukon "as nearly as practicable entirely within a single lane" in violation of N.J.S.A. 39:4-88(b).

N.J.S.A. 39:4-88, which applies to roadways that have "been divided into clearly marked lanes for traffic," provides in section (b) that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety."

After a scholarly review of how other courts had interpreted provisions comparable to ours, which is based on the *Uniform Vehicle Code, see Unif. Vehicle Code* § 11-309(a), reprinted in *Traffic Laws Annotated, National Committee on Uniform Traffic Laws and Ordinances, U.S. Dep't of Transp.* (1979), Judge Ostrer concluded the section imposes two independent requirements: "First, a driver must, as nearly as practicable, drive within his single lane, in other words, maintain his lane. Second, a driver may not change lanes until he can do so safely."

Although we later disagreed with Woodruff in an unpublished opinion, concluding section 88(b) described only one offense, not two, our Supreme Court agreed with Judge Ostrer that the provision "describes two separate and independent offenses, one for a driver's failure to maintain a lane to the extent practicable and the other for changing lanes without ascertaining the safety of the lane change." *State v. Regis*, 208 N.J. 439, 442 (2011). The Court also agreed with Judge Ostrer's view in Woodruff that the State need not establish that the driver's failure to maintain his lane risked the safety of other drivers, finding section 88(b) "is not limited to circumstances in which the deviation from the lane is demonstrated to be a danger to other drivers." Id. at 448.

Although the trial judge referred to Boone's alleged violation as an "unsafe lane change," there is no dispute that Boone was issued the ticket for failure to maintain a lane. And although the judge was satisfied the detective credibly testified he saw the Yukon cross the center line, that fact alone does not establish the violation. Section 88(b) is not a strict liability offense. The statute requires a driver to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b). See *Regis*, 208 N.J. at 449 n.3 (emphasizing "the Legislature qualified its mandate to remain in a single lane with the crucial phrase 'as nearly as practicable'"). The detective's testimony at the hearing was simply inadequate to permit the judge, as a matter of law, to determine whether the detective possessed a reasonable suspicion that the statute had been violated.

Because "a stop founded on a suspected motor vehicle violation essentially is governed by the same case law used to evaluate a stop based on suspected criminal or quasi-criminal activity," *State v. Golotta*, 178 N.J. 205, 213 (2003), the officer conducting the stop must have a "particularized suspicion" based on objective observations that the driver has violated the traffic laws or has engaged in some criminal conduct, which " must be based upon the law enforcement officer's assessment of the totality of circumstances with which he is faced." *State v. Davis*, 104 N.J. 490, 504 (1986). The State is not required to prove the violation occurred. *State v. Williamson*, 138 N.J. 302, 304 (1994). "[T]he State need prove only that the police lawfully stopped the car, not that it could convict the driver of the motor-vehicle offense." Ibid.

Nevertheless, "[t]he stop must be reasonable and justified by articulable facts; it may not be based on arbitrary police practices, [or] the officer's subjective good faith." *State v. Coles*, 218 N.J. 322, 343 (2014).

Because section 88(b) does not make every crossing of the center line a violation, the officer conducting a stop must have an articulable basis for concluding the driver failed to adhere to his single lane as nearly as practicable. See *Williamson*, 138 N.J. at 304 (holding an officer stopping a car for failure to signal a lane change "must have some articulable basis for concluding that the lane change might have an effect on traffic" as N.J.S.A. 39:4-126 requires a motorist to signal only "in the event any other traffic may be affected by such movement"). As Judge Ostrer held in *Woodruff*, "the lane maintenance statute requires 'a fact-specific inquiry into the particular circumstances present during the incident in question in order to determine whether the driver could reasonably be expected to maintain a straight course at that time in that vehicle on that roadway.'" 403 N.J. Super. at 628 (quoting *United States v. Alvarado*, 430 F.3d 1305, 1309 (10th Cir. 2005)).

As explained in *Woodruff*:

Based on such a fact-sensitive analysis, one or two deviations from a lane may or may not constitute a violation, depending on the circumstances. While it might not be reasonable to expect a driver to avoid even the slightest deviation from a lane over an extended distance, it may be reasonable to expect drivers to avoid a sudden, significant deviation from the lane or a sudden, over-compensating return back, absent physical obstacles, mechanical difficulty, or other uncontrollable circumstances. Moreover, even if it may be unreasonable to expect a driver on an empty road to avoid any slight deviation from a lane over an extended distance, it would be reasonable to expect drivers to avoid repeatedly deviating from the lane, although slightly, over a short distance.

The detective testified Boone's Yukon crossed the center line on North West Avenue more than one time but was not driving erratically. That is all the particulars the detective offered the court. He couldn't say where Boone crossed, how many times he crossed, or how far into the other lane he went each time. And although there is evidence in the record it was near midnight, dark and raining, that there was little to no traffic, the speed-limit was only twenty-five miles per hour and Boone was driving a fifteen-year-old, full-size SUV, there was no testimony about the width of the road or its condition. Moreover, there is nothing in the record to allow the court to conclude the detective considered any of those things — or indeed, anything other than Boone's crossing the center line — in deciding to pull him over, notwithstanding "the number of lane departures is just one factor in determining whether a driver has adhered to a single lane as nearly as practicable." Id. at 627.

We do not believe Boone's "tacit admission" that he may have crossed the center line changes the analysis. First, of course, is that crossing the center line is, depending on the circumstances, not necessarily a violation of the statute. Second, the detective did not advise Boone he'd seen the Yukon cross the line multiple times when Boone allowed he may have been talking with his passenger and not "really paying attention too much." More serious is the detective's explanation for his inability to better describe what he believed to have been the violation — his candid admission that he was likewise distracted following the Yukon, "listening to the police radio. . . .

[P]aying attention to all [his] surroundings, other traffic, the weather conditions. What [he was] going to do. Is this guy going to try to harm me? Is he going to be polite? Is he going to be cooperative? A lot going on."

The law is well settled that "[t]he suspicion necessary to justify a stop must not only be reasonable, but also particularized." *State v. Scriven*, 226 N.J. 20, 37 (2016). The detective's generalized statement that the Yukon crossed the center line more than once without any particulars as to where, how many times, over what distance, how extensive the incursion or the effect of the darkness, the rain, the Yukon's size and the condition of the road on his assessment of the violation simply does not suffice here. Although inferences from the facts testified to will often suffice to establish reasonable suspicion for the violation, see, e.g., *State v. Jones*, 326 N.J. Super. 234, 239 (App. Div. 1999) (finding a trooper's testimony about the rush hour traffic conditions sufficed to support an articulable and reasonable basis for concluding the un- signaled lane change might have affected other cars), the only facts the detective could offer here were wholly insufficient to establish reasonable suspicion of the violation, see *Williamson*, 138 N.J. at 304-06 (finding an officer offered no articulable basis for concluding "the lane change might have an effect on traffic").

It was the State's obligation to put forth facts at the suppression hearing to establish the detective had "a 'particularized suspicion' based upon an objective observation" that Boone had violated section 88(b), which it patently failed to do. See *Davis*, 104 N.J. at 504. To the extent the detective believed that a motorist crossing the center line was sufficient to establish a violation of section 88(b), he was incorrect. See *Regis*, 208 N.J. at 449 n.3 (describing the provision's "as nearly as practicable" language as a "crucial phrase" qualifying the Legislative mandate that motorists "remain in a single lane"); see also *State v. Carter*, 247 N.J. 488, 532 (2021) (declining "to adopt a reasonable mistake of law exception under the New Jersey Constitution").

We do not question the detective's good faith or impugn the trial court's finding that he was a credible witness. Neither is enough, however, to justify this stop. See *State v. Shaw*, 213 N.J. 398, 411 (2012) (observing "an officer's hunch or subjective good faith — even if correct in the end — cannot justify an investigatory stop or detention"). The trial judge thoughtfully considered and conscientiously addressed the issues presented by this stop and search.

The detective simply failed to offer facts sufficient, as a matter of law, to allow the court to determine he possessed a reasonable suspicion that Boone failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b).

Because we conclude the motor vehicle stop conducted in this case did not meet constitutional requirements, we reverse the order denying defendant's suppression motion and remand for suppression of the evidence and further proceedings not inconsistent with this opinion.

Garland v. Cargill 602 U.S. ___ (2024) Docket No.22-976

Justia Summary

The case revolves around the legality of bump stocks, accessories that allow semi-automatic rifles to fire at a rate similar to machine guns. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) had long held that semi-automatic rifles equipped with bump stocks were not machine guns under the statute. However, following a mass shooting in Las Vegas, Nevada, where the shooter used bump stocks, the ATF reversed its position and issued a rule classifying bump stocks as machine guns.

The case was first heard in the District Court, where Michael Cargill, who had surrendered two bump stocks to the ATF under protest, challenged the rule. Cargill argued that the ATF lacked statutory authority to classify bump stocks as machine guns because they did not meet the definition of a machine gun under §5845(b). The District Court ruled in favor of the ATF, concluding that a bump stock fits the statutory definition of a machine gun.

The case was then taken to the Court of Appeals, which initially affirmed the District Court's decision but later reversed it after rehearing *en banc*. The majority of the Court of Appeals agreed that §5845(b) was ambiguous as to whether a semi-automatic rifle equipped with a bump stock fits the statutory definition of a machine gun. They concluded that the rule of lenity required resolving that ambiguity in Cargill's favor.

The Supreme Court of the United States affirmed the decision of the Court of Appeals. The Court held that a semi-automatic rifle equipped with a bump stock is not a machine gun because it cannot fire more than one shot by a single function of the trigger. Furthermore, even if it could, it would not do so automatically. Therefore, the ATF exceeded its statutory authority by issuing a rule that classifies bump stocks as machine guns.

Primary Holding
A bump stock—an accessory for a semiautomatic rifle that allows the shooter to rapidly reengage the trigger (and therefore achieve a high rate of fire)—does not convert the rifle into a "machine gun."

NOTE: Bump stocks will remain illegal in California, Connecticut, the district, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nevada, **New Jersey**, New York, Rhode Island, Vermont, Virginia, and Washington, according to Everytown for Gun Safety (www.everytown.org).