No. _____

IN THE

Supreme Court of the United States

J.A.,
Petitioner

v.

STATE OF NEW JERSEY,
Respondent

APPENDIX
ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW JERSEY

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SUPREME COURT OF NEW JERSEY
A-38 September Term 2016
077383

STATE OF NEW JERSEY

IN THE INTEREST OF J.A.,

Juvenile-Appellant.

Argued January 2, 2018 – Decided June 6, 2018

On certification to the Superior Court, Appellate Division.

Peter T. Blum, Assistant Deputy Public Defender, argued the cause for appellant J.A. (Joseph E. Krakora, Public Defender, attorney; Peter T. Blum, of counsel and on the briefs).

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

Alexander Shalom argued the cause for amicus curiae American Civil Liberties Union of New Jersey (Edward L. Barocas, Legal Director, and Rutgers Constitutional Rights Clinic, attorneys; Alexander Shalom, Edward L. Barocas, Jeanne LoCicero, of counsel and on the brief, and Ronald K. Chen, on the brief).

Jonathan Romberg argued the cause for amicus curiae Seton Hall University School of Law Center for Social Justice (Seton Hall University School of Law Center for Social Justice, attorney; Jonathan Romberg, on the brief).

JUSTICE FERNANDEZ-VINA delivered the opinion of the Court.

In this case, we consider the admissibility of evidence procured from a home after police officers' warrantless entry.

A man was attacked at a bus stop in Willingboro and his cell phone was stolen. He and a police officer tracked the phone's location to a nearby house using a phone tracking application.

Several officers arrived at the house, and one spotted the stolen cell phone's case through a window. When no one responded to their knocks on the door, the officers entered the house through an unlocked window. Once inside, they performed a protective sweep to determine whether the suspect was inside, and they found defendant, J.A., then seventeen years of age, under the covers of a bed. Shortly thereafter, defendant's mother and brother arrived home. After the officers explained their investigation, defendant's mother consented to a search of the house, and defendant's brother voluntarily retrieved the stolen phone. Defendant was later charged with second-degree robbery for theft of the phone.

Defendant moved to suppress the evidence, arguing that the officers' entry into his home was unconstitutional because the officers entered without a warrant and there were no circumstances that would justify an exception to the warrant requirement. The trial court denied defendant's motion to

suppress. The court found that, although the officers' search procedure may have been imprudent, it was ultimately defendant's brother -- without any coercion or duress from law enforcement -- who retrieved the cell phone. The court reasoned that defendant could not challenge the seizure of the cell phone in light of that lack of state action.

Defendant appealed, and the Appellate Division affirmed. The panel held that the officers had probable cause to search and found that exigent circumstances justified the officers' warrantless entry into defendant's home. The panel also found that the fact that defendant's brother, and not law enforcement officers, retrieved the phone neutralized any potential problems with his mother's consent.

We disagree with the panel's determination that the officers' warrantless entry was justified by the claimed exigency faced by the officers. However, we agree that defendant's brother's actions did not constitute state action and were sufficiently attenuated from the unlawful police conduct. Because we find that the brother's independent actions operate to preclude application of the exclusionary rule to the evidence, we do not reach the question of defendant's mother's consent to search. Accordingly, we modify and affirm the judgment of the Appellate Division.

I.

A.

On May 30, 2014, the victim was standing at a bus stop in Willingboro when he was approached by a young man in a hooded black sweatshirt and camouflage shorts. The young man asked to use the victim's cell phone, explaining that he was locked out of his house. The victim hesitated, then reached to take out his phone. As the victim was facing the other direction, the man punched him in the arm, took the phone, and ran.

A Willingboro Police Officer was dispatched to meet the victim at the bus stop. The victim explained that the phone was an Apple iPhone, which had been in a pink glittery case.

The officer and the victim used the "Find My iPhone" application to track the location of the phone. The application immediately identified a house about three blocks from the bus stop as the phone's whereabouts. After about two minutes, the phone was shut off, which prevented the application from further tracking the phone's location.

The officer went to the house, and other police officers were dispatched there as well. The officers decided to secure the perimeter of the house. While performing an exterior security check, an officer peered through a first-floor window and noticed a pink glittery phone case matching the victim's description on a nearby bed. At that point, the police thought

that the young man who took the victim's phone may have been inside the house.

The officers believed that the house was abandoned: curtain blinds covered most of the windows, there were no signs of life inside or cars in the driveway, and no one responded to the officers' several knocks on the front door.

One officer found an unlocked window on the first floor, through which he and another officer entered the house. Another officer subsequently entered through the front door. Once inside, the officers began searching the house for the suspect. During their search, they observed the phone case that was previously seen through the first floor window, but did not take possession of it. The phone was not found during that initial search.

The officers found defendant, unarmed, upstairs in the master bedroom, lying under a blanket on the bed. The officers also found a hooded sweatshirt and a pair of camouflage shorts nearby.

The officers handcuffed defendant, brought him downstairs, and questioned him about his knowledge of the robbery. Defendant's family members subsequently arrived at the house, including his older brother and mother, who lived there. The latter appeared irate at defendant upon her arrival. She asked the police "what did [defendant] do now?" and said that she was

"sick" of his antics and that she previously "told him if he comes here acting up he's got to go." She angrily informed the officers that they could search the house for the missing phone.

The officers explained to defendant's brother that they suspected that defendant had stolen the phone. Defendant's brother irritably responded that stealing a phone is something that defendant would be inclined to do. The brother asked if the officers had found the phone, and when they responded that they had not, he said that if it was not in defendant's bedroom, it was probably in the younger brother's room. Without encouragement from the police, he went to their younger brother's room accompanied by an officer, found a phone, and gave it to the officer. The phone matched the victim's description of his stolen phone.

Defendant's mother later provided written consent to search the house.

B.

Defendant was charged with an act that would have constituted second-degree robbery, contrary to N.J.S.A. 2C:15-1(a)(1), had he been an adult at the time. He filed a motion to suppress the phone, arguing that it was found as a result of an unconstitutional search and seizure.

At the suppression hearing, the court found that the police did not conduct a search of the residence until his mother gave

consent. The court also found that defendant's brother's search was not driven by "coercion or duress from law enforcement," explaining that although "third parties acting on behalf of the State are bound by constitutional strictures," the brother's actions here did not constitute state action. The court opined that the officers' behavior in the house may have amounted to "sloppy search procedure." It held, however, that because defendant's brother retrieved the phone, and because he did not act as an agent of the officers, defendant could not bring a constitutional claim to challenge the seizure of the phone. Therefore, the court denied defendant's suppression motion.

The case went to trial and defendant was adjudicated delinquent and sentenced to two years of house arrest.

Defendant appealed, arguing that the trial court should have suppressed the cell phone evidence because the police officers' entrance into his home and subsequent search were unconstitutional. The Appellate Division affirmed. The panel concluded that the officers had probable cause to search and faced exigent circumstances, which justified their warrantless entry into defendant's home.

The panel explained that the "novel aspect of cutting-edge technology" -- the Find My iPhone application -- allowed the police to track the stolen iPhone, and that the police confirmed that the phone was inside the house when they spotted its case

through a window. Together, those facts gave the officers "a reasonable and well-grounded belief that the person who robbed the victim minutes earlier was inside the home."

The panel stated that "[t]he technology that led police to [defendant's] home provided some of the exigency supporting their entry." In particular, the court found it significant that two minutes after the officer activated the "Find My iPhone" application, the phone was turned off. That led the officer to feel that "immediate action was required because once the phone was turned off, it could be moved and the GPS capabilities would not function." The panel found that this concern was reasonable, "as the small cell phone could easily have been destroyed or hidden, and was the only physical evidence linking [defendant] to the robbery." Thus, the panel concluded that, "in entering the residence to secure the area, determine whether there was any danger to anyone in the house, and prevent destruction of the proceeds of the robbery," the police acted reasonably and within the confines of the Fourth Amendment.

The panel reasoned that had the officers identified defendant as a suspect immediately following the taking of the victim's phone and then physically followed him to the house, the "hot pursuit" doctrine, in all likelihood, would have permitted the warrantless entry. The panel found that, though

those facts are not present here, there "was a close temporal link between a serious criminal event, during which physical force was used against the victim, and the police pursuit that resulted in a warrantless entry." The panel also found that there was "a reasonable expectation that a delay in obtaining a warrant would result in the destruction of evidence." Therefore, the panel concluded that the record supported a finding that the hot pursuit exception to the warrant requirement rendered the officers' action constitutional.

Moreover, the panel noted that defendant's brother voluntarily retrieved the phone and handed it to police. The panel found that because defendant's brother, a non-state actor, uncovered the phone, defendant's mother's consent was not significant to the constitutional analysis of this search. The panel consequently affirmed.

Defendant filed a petition for certification with this Court, again challenging the trial court's denial of his suppression motion. We granted certification. 229 N.J. 164 (2017). We also granted amicus curiae status to the American Civil Liberties Union of New Jersey (ACLU) and the Seton Hall University School of Law Center for Social Justice.

II.

A.

First, defendant argues that the hot pursuit doctrine cannot validate the officers' warrantless entry into his home. For the hot pursuit doctrine exception to apply, defendant asserts, the State must show that the "suspect (1) was armed and immediately dangerous or (2) knew that the police were in pursuit and therefore had a reason to immediately dispose of evidence." Defendant contends that the State has failed to prove that he posed a danger to anyone or that he knew that he was being trailed and would thus be motivated to destroy evidence.

Additionally, defendant suggests that whether his brother led the police to the phone is "legally insignificant" because the "police were not lawfully present in the home." Defendant adds that his brother was not acting as a private citizen because a police officer was "right beside" him as they searched the house together. Therefore, defendant asserts, his brother was acting on behalf of the State for constitutional purposes.

B.

As does defendant, amici Seton Hall University School of Law Center for Social Justice and the ACLU claim that the officers' entry into defendant's home was not justified under any exception to the warrant requirement. Amici argue that the hot pursuit doctrine is not applicable because the police were never in pursuit of defendant and there was no basis to believe

that the suspect either posed a danger to officers or anyone in the house or knew that he was being followed and would therefore be likely to destroy the phone. Seton Hall University School of Law Center for Social Justice also posits that the destruction of the phone was not even possible, distinguishing it from evidence in other cases, such as controlled substances, which can actually be disposed of completely via flushing or burning. Therefore, Seton Hall University School of Law Center for Social Justice suggests that there could be no fear that the phone would lose its evidentiary value.

Seton Hall University School of Law Center for Social Justice further asserts that the officers were not justified in entering the home based on any other exigency because the theft of a phone does not alone present sufficiently dangerous circumstances and the officers could have safely waited to obtain a telephonic warrant while securing the house.

As to defendant's brother's search, amici argue it was the product of the unlawful police entry. Amici contend that defendant's brother acted only after he discovered that the police had -- as far as he knew, lawfully -- entered the home, gathered inculpatory evidence, and seized defendant. Thus, amici claim, the search was the inadmissible fruit of the illegal entry's poisonous tree.

C.

The State contends that objectively exigent circumstances existed to justify the officers' entry because the officers entered the house "shortly after learning that evidence of a robbery was in the house." The State also asserts the officers' reasonable concern that evidence might be destroyed if they waited to obtain a warrant because the "suspect had already changed the appearance of the stolen iPhone by removing it from its case" and had "turned the phone off." The State stresses that because the officers were investigating a violent robbery and did not know the seriousness of the threat that they or the occupants of the house faced from the suspect, they needed to enter the house in order to protect themselves and others. Additionally, the State disputes amici's argument that the hot pursuit doctrine can never be applied where the perpetrator is unarmed or where there is no actual "chase."

Finally, the State emphasizes that defendant's brother voluntarily located the stolen phone and gave it to the officers. The State contends that defendant's brother's actions were independent, non-state actions that were sufficiently attenuated from any alleged misconduct related to the officers' entry. Thus, according to the State, the trial court properly held that the phone was admissible at trial.

III.

A.

When an appellate court reviews a trial court's decision on a motion to suppress, the reviewing court defers to the trial court's factual findings, upholding them "so long as sufficient credible evidence in the record supports those findings." State v. Gonzales, 227 N.J. 77, 101 (2016). "An appellate court 'should give deference to those findings of the trial judge which are substantially influenced by [the] opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

However, the reviewing court need not defer to the trial court's legal conclusions, State v. Bryant, 227 N.J. 60, 71-72 (2016), which appellate courts review de novo, State v. Hathaway, 222 N.J. 453, 467 (2015).

B.

The Fourth Amendment of the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution both safeguard the right to privacy and forbid warrantless entry into a home except under certain circumstances. State v. Davila, 203 N.J. 97, 111-12 (2010); see also State v. Cassidy, 179 N.J. 150, 160 (2004) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." (quoting State v. Hutchins, 116 N.J. 457, 463 (1989))). Therefore, a warrantless entry into a home is presumptively

invalid unless the State can show that it falls within one of the specific, delineated exceptions to the general warrant requirement. Davila, 203 N.J. at 111-12. Courts subject warrantless entries to "particularly careful scrutiny," and "only in extraordinary circumstances may . . . [such entries] be justified." State v. Bolte, 115 N.J. 579, 583-84 (1989) (citing Welsh v. Wisconsin, 466 U.S. 740 (1984)).

Evidence found pursuant to a warrantless search not justified by an exception to the warrant requirement is subject to suppression, see State v. Edmonds, 211 N.J. 117, 121-22 (2012), under the exclusionary rule -- "'a judicially created remedy designed to safeguard' the right of the people to be to be free from 'unreasonable searches and seizures,'" State v. Williams, 192 N.J. 1, 14 (2007) (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)). The exclusionary rule prohibits the State from "introducing into evidence the 'fruits' of" unlawful police conduct, State v. Badessa, 185 N.J. 303, 311 (2005), and thus denies "the prosecution the spoils of constitutional violations," id. at 310 (citing State v. Evers, 175 N.J. 355, 376 (2003)).

However, the exclusionary rule applies to preclude the admission of evidence only when such evidence is suitably linked to the police misconduct. Id. at 311. Therefore, when evidence is acquired by constitutionally valid means after initial

unconstitutional action by law enforcement, courts must consider whether the exclusionary rule is applicable.

The appropriate inquiry for courts assessing the admissibility of the evidence is whether the evidence was "the product of the 'exploitation' of [the unconstitutional police action] or of a 'means sufficiently distinguishable' from the constitutional violation such that the 'taint' of the violation was 'purged.'" State v. Shaw, 213 N.J. 398, 414 (2012) (quoting Hudson v. Michigan, 547 U.S. 586, 592 (2006)). Such evidence is admissible "when the connection between the unconstitutional police action and the secured evidence becomes 'so attenuated as to dissipate the taint' from the unlawful conduct." Ibid. (quoting Badessa, 185 N.J. at 311).

In Brown v. Illinois, 422 U.S. 590, 593-94 (1975), the United States Supreme Court identified three factors that courts should consider in evaluating attenuation between the valid and violative police actions. We summarized them in Shaw: "(1) 'the temporal proximity' between the illegal conduct and the challenged evidence; (2) 'the presence of intervening circumstances'; and (3) 'particularly, the purpose and flagrancy of the official misconduct.'" 213 N.J. at 415 (quoting Brown, 422 U.S. at 603-04). The determination of whether evidence is the fruit of unlawful police conduct is a factual matter for courts to decide on a case-by-case basis. State v. Johnson, 118

N.J. 639, 653 (1990) (citing Brown, 422 U.S. at 604 n.10; Dunaway v. New York, 442 U.S. 200, 218 (1979); State v. Worlock, 117 N.J. 596, 625 (1990)).

In sum, evidence seized without a warrant and in the absence of an exception to the warrant requirement is subject to suppression unless the exclusionary rule is inapplicable. That rule does not apply when the conduct through which the evidence is obtained was too attenuated from the unlawful police conduct to be subject to its "taint."

IV.

Here, the State argues that the warrantless entry was lawful because it was justified by the exigency faced by the officers.[1]

A.

One recognized exception to the warrant requirement is the presence of exigent circumstances. State v. Johnson, 193 N.J. 528, 552 (2008). To invoke that exception, the State must show that the officers had probable cause and faced an objective exigency. Bolte, 115 N.J. at 585; accord State v. Dunlap, 185 N.J. 543, 551 (2006).

[1] As a threshold matter, although the State claims that the police officers may have believed the home was vacant, the State has not shown a reasonable basis to believe the house was abandoned. The State, in fact, concedes that it is not challenging the juvenile's standing based on a theory of abandonment. See State v. Brown, 216 N.J. 508 (2014).

The latter inquiry is fact-sensitive. State v. Nishina, 175 N.J. 502, 516-17 (2003). In that evaluation, a court considers the totality of the circumstances, see State v. DeLuca, 168 N.J. 626, 632 (2001), including: "the urgency of the situation, the time it will take to secure a warrant, the seriousness of the crime under investigation, and the threat that evidence will be destroyed or lost or that the physical well-being of people will be endangered unless immediate action is taken," Johnson, 193 N.J. at 552-53. Regarding the weight assigned to the respective considerations, we have recognized that "[p]olice safety and the preservation of evidence remain the preeminent determinants of exigency." Dunlap, 185 N.J. at 551.

"The 'hot pursuit' of a defendant who poses a threat to public safety may in certain contexts constitute an exigent circumstance sufficient to support a warrantless home entry . . . ." Bolte, 115 N.J. at 598; see also Steagald v. United States, 451 U.S. 204, 218 (1981) (noting the Court's longstanding recognition that "'hot pursuit' cases fall within the exigent-circumstances exception to the warrant requirement").

For a "hot pursuit" to justify an exception to the warrant requirement, officers must have had probable cause, Bolte, 115 N.J. at 593, and have been "in immediate or continuous pursuit

of the [suspect] from the scene of [the] crime," id. at 592 (quoting Welsh, 466 U.S. at 753). However, although "'hot pursuit' means some sort of a chase, . . . it need not be an extended hue and cry in and about the public streets." United States v. Santana, 427 U.S. 38, 43 (1976) (internal quotation marks and brackets removed) (validating warrantless entry after police were told of suspect's location by third party, traveled to her location, saw her on front porch of her house, and followed her in as she retreated).

Because the "hot pursuit" doctrine is a subset of the exigent-circumstances exception to the warrant requirement, the touchstones that would justify a warrantless entry remain the possible destruction of evidence, ibid.; Bolte, 115 N.J. at 594, and the threat of violence by the suspect, Bolte, 115 N.J. at 598.

In Bolte, for example, a police officer observed the defendant driving erratically for approximately one mile. Id. at 581. The officer followed the defendant home and when the defendant exited his car and entered his home through a garage door, the officer followed him into the garage and house. Ibid. The officer continued upstairs and arrested the defendant in his bedroom. Ibid. The defendant refused to submit to a breathalyzer test at the police station and was charged with motor vehicle and disorderly persons offenses. Ibid. The

defendant moved to suppress evidence of his refusal to submit to the breathalyzer test, claiming that he had been subject to an unlawful arrest when the officer entered his home without a warrant. Ibid.

The trial court held that the officer's entry into the house was justified under the hot pursuit exception to the warrant requirement. Ibid. The Appellate Division reversed, finding that the hot pursuit doctrine applies only when the suspect has committed a serious offense, and also holding that exigent circumstances did not exist in the case. Id. at 583.

This Court affirmed, finding that hot pursuit could not justify the police entry. Id. at 593. We emphasized that the defendant there was unarmed, and the police had no reason to believe that he posed a danger to the police or the public. Ibid. We found that after the defendant had entered his home, there was no indication that he would hurt anyone inside or "leave the house to resume his erratic driving behavior." Id. at 593-94. Finally, we highlighted that the officers also had no reason to believe that the defendant would destroy evidence -- a justification usually reserved for narcotics cases. Id. at 594 (comparing facts to those of Santana, 427 U.S. at 39-41, which involved the "threatened destruction of the narcotics"). We consequently affirmed the Appellate Division's determination that the evidence should be suppressed. Id. at 598.

B.

With those principles in mind, we turn to the facts of this case and hold that the officers' warrantless entry into defendant's house was not justified by exigent circumstances. Although we agree with the Appellate Division's finding that the officers had probable cause, we reject its application of the hot pursuit doctrine.

Initially, we need not consider whether the officer's pursuit of defendant, facilitated by his use of the Find My iPhone application, falls within the purview of the hot pursuit doctrine because the doctrine does not apply for other reasons. Our analysis of the circumstances surrounding this pursuit informs our conclusion that it cannot constitute an exigency sufficient to justify the suspension of the warrant requirement. Although the crime committed was arguably a violent one, the State has failed to prove that the police had any basis to believe that defendant would injure anyone inside the house or the officers themselves, so that waiting to obtain a warrant would have been unreasonable.

Likewise, the State has not shown that the officers had any reason to believe that defendant would (or could effectively) destroy the phone. There is no evidence supporting that defendant knew that he was being followed and would thus have had an impetus to dispose of the phone. And even if he did,

unlike controlled substances or narcotics, a phone cannot be easily flushed down a drain or destroyed by burning. While it is possible that defendant powered down the phone so that he could not be as easily traced, deactivating a tracking device on an electronic piece of evidence simply reduces the trackable evidence to an average piece of evidence; the mere presence of evidence in a home does not alone justify a warrantless entry.

In the absence of any danger that defendant would commit violent acts or that he would destroy the desired evidence, we find that the officers' pursuit of defendant was not an exigency overriding the warrant requirement. We therefore find that neither exigency nor the hot pursuit doctrine justified the officers' warrantless entry here. However, for the following reasons, as a result of defendant's brother's attenuated, non-state actions, we affirm the trial court's denial of defendant's motion to suppress.

V.

A.

The Fourth Amendment's prohibition against unreasonable searches and seizures operates as a restraint only upon sovereign authority. State v. Scrotsky, 39 N.J. 410, 416 (1963). Thus, "where a private person steals or unlawfully takes possession of property from the premises of the owner and turns it over to the government, which did not participate in

the taking, it may be used as incriminating evidence against the owner in a subsequent criminal prosecution." Ibid.

When a private person acts "as an arm of the police," however, the private person's seizure of property constitutes state action. Ibid. In other words, when a private citizen acts "in concert" with police officers, the private citizen's actions are treated as state action for purposes of the Fourth Amendment. See ibid.

In Scrotsky, the landlady of an apartment building suspected that one of her tenants had been stealing personal effects from her home located within the building. Id. at 413. After two previous visits to the tenant's apartment, during which she discovered her possessions, the landlady entered the tenant's apartment a third time, accompanied by a police detective. Id. at 413-14. At the direction of the detective, the landlady found and reclaimed her stolen property and brought it to police headquarters before returning home with it. Id. at 414. The tenant was not home during any of the three visits. Ibid. He was arrested for theft of the landlady's property and was eventually convicted. Ibid.

On appeal to this Court, the tenant argued that the evidence taken by the landlady from his apartment, which was used at trial to prove the State's case, was procured by an unconstitutional search and seizure. Id. at 412. The State

contended that the evidence was not vulnerable to constitutional challenge and hence admissible because the landlady, a non-state actor, effectuated the search and removed her stolen possessions. Id. at 414-15.

We disagreed, finding that the landlady "went into the apartment with the [police] and seized the property under color of their authority and as a participant in a police action." Id. at 415. Reasoning that "the detective and [the landlady] went to the apartment . . . for a dual purpose, she to recover her property, he to investigate and obtain evidence of [the] crime," id. at 415-16, we determined that "[t]he search and seizure by one served the purpose of both, and must be deemed to have been participated in by both," id. at 416. We concluded that it would have been "idle to say that the officers did not conduct the search or seizure," because the landlady had to be considered the instrument of the police. Id. at 415. We therefore remanded for a new trial, ordering that the evidence seized by the landlady could not be introduced. Id. at 417-18.

B.

Guided by those principles, we turn to the State's argument that defendant's brother's search for the missing phone was independent non-state action free from constitutional restrictions and sufficiently attenuated from the police's illegal entry to be permissible. We agree.

Defendant's brother was clearly not acting as an agent of the State when he searched the house for the phone. Unlike in Scrotsky, where the landlady and the police detective traveled to the tenant's apartment together with the sole purpose of discovering and retrieving the landlady's stolen property, defendant's brother's actions were completely independent of the officer's investigation. Frustrated with yet another incident of defendant's misconduct, defendant's brother decided to search the house without solicitation or even encouragement from the officers present. And when the brother successfully recovered the victim's phone, he offered it to the police without request. The mere presence of an officer during the brother's self-imposed investigation does not by itself indicate police coercion or influence.

Moreover, defendant's brother's actions were voluntary and sufficiently attenuated from the officers' unlawful entry. No evidence in the record supports a finding that defendant's brother's search was causally or temporally connected to the police misconduct. Contrary to the dissent's assertions, it is uncontroverted that defendant's brother arrived some time after the police without knowledge that the police lacked a warrant. Further, the dissent's conclusions that the police's unconstitutional presence "surely heavily influenced" and motivated the brother's decision to search for the phone and

that it was "not likely" that the brother would have looked for evidence in the parents' home without the presence of the police are unsupported by the record. Post at ___ (slip op. at ___). Defendant's brother's unprovoked decision to search for the phone himself is an intervening circumstance that breaks the causal connection between the unlawful police entry and the finding of the phone.

The dissent's reliance on State v. Smith, 155 N.J. 83 (1998), is misplaced. There, the police knowingly and intentionally elicited consent to search the apartment shortly after gaining access to it by unconstitutional means. Here, the brother's actions were purely voluntary and unsolicited by the police. Id. at 89-90. Here, even if we were to characterize the officers' action as flagrant, the entry never led to a police-enacted search for the phone. Defendant's brother chose to undertake his search on his own, motivated by his displeasure with defendant's actions -- not by any encouragement, request, or intimidation by the police. Therefore, his actions constituted "means sufficiently distinguishable to be purged of the primary taint" of the police misconduct. Shaw, 213 N.J. at 413 (quoting Wong Sun v. United States, 371 U.S. 471, 488

(1963)). Consequently, we hold that the phone is immune from the reach of the exclusionary rule.[2]

VI.

Accordingly, we modify and affirm the judgment of the Appellate Division.

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

[2] Because we find that the brother's independent actions operate to remove the evidence from the ambit of the exclusionary rule, we do not reach the question of defendant's mother's consent to search.

STATE OF NEW JERSEY

IN THE INTEREST OF J.A.,

Juvenile-Appellant.

JUSTICE ALBIN, dissenting.

I concur with the majority that four officers of the Willingboro Police Department unlawfully entered the home of defendant's family in violation of the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. However, I disagree with the majority's conclusion that the cell phone retrieved from the home was not the product of unconstitutional police conduct subject to the exclusionary rule.

During their unlawful presence in defendant's home, the officers swept through various rooms, confronted defendant's sister who had just awakened, located and arrested defendant for the alleged robbery of a cell phone, and seized evidence. The police then remained unlawfully on the premises until defendant's mother, stepfather, and brother returned. The three family members found their home occupied by the police and the seventeen-year-old defendant in handcuffs seated on a couch in the living room. The mother, stepfather, and brother did not

know that the police had unlawfully broken into their home and had no right to be there.

An officer explained to the family members that they were investigating the theft of a cell phone by defendant. When asked by the brother whether they had found it, the officer answered, "nope." In response to the surreal situation he encountered, the brother offered to look for the cell phone -- and did so while shadowed by an officer. He discovered the phone in another brother's room and gave it to the officer.

I cannot conclude, as the majority does, that the brother's act of recovering the cell phone was independent of or sufficiently attenuated from the unconstitutional police presence in his home. The State failed to show that the unlawful police occupation of the family home did not heavily influence the brother's decision to fetch the phone and that, absent the unlawful police presence, the brother would have volunteered to look for the phone.

Because there was no break in the causative chain between the officers' unconstitutional presence in the home and the ultimate discovery of the cell phone, evidence of the phone should have been suppressed. I therefore respectfully dissent.

I.

A.

The Fourth Amendment and Article I, Paragraph 7 of our State Constitution are intended to protect the home from "unreasonable searches and seizures" by the police. State v. Brown, 216 N.J. 508, 526 (2014). The home is the singular place where the privacy interests of people are most profound. Ibid. "Indeed, 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" State v. Vargas, 213 N.J. 301, 313 (2013) (quoting United States v. U.S. Dist. Court, 407 U.S. 297, 313 (1972)).

"The exclusionary rule 'is a judicially created remedy designed to safeguard' the right of the people to be free from 'unreasonable searches and seizures.'" State v. Williams, 192 N.J. 1, 14 (2007) (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)). The rule requires the suppression of evidence secured through the violation of constitutional rights. Id. at 16-17. It is intended "'to deter future unlawful police conduct' by denying the prosecution the spoils of constitutional violations," State v. Badessa, 185 N.J. 303, 310 (2005) (quoting State v. Evers, 175 N.J. 355, 376 (2003)), and "to uphold judicial integrity by serving notice that our courts will not provide a forum for evidence procured by unconstitutional means," State v. Shaw, 213 N.J. 398, 413-14 (2012) (quoting Williams, 192 N.J. at 14). At its core, the exclusionary rule ensures that "the Fourth Amendment is not reduced to 'a form of

words.'" Evers, 175 N.J. at 376 (quoting Mapp v. Ohio, 367 U.S. 643, 648 (1961)).

An exception to the exclusionary rule is the attenuation doctrine. Shaw, 213 N.J. at 414. If the seizure of evidence is so attenuated from unconstitutional police conduct that the taint from the unlawful conduct is sufficiently purged, the exclusionary rule will not apply. Ibid. The State bears the burden of proving attenuation. Brown v. Illinois, 422 U.S. 590, 604 (1975). To determine whether seized evidence is sufficiently attenuated from police misconduct to justify not invoking the exclusionary rule, we look to three factors: "(1) 'the temporal proximity' between the illegal conduct and the challenged evidence; (2) 'the presence of intervening circumstances'; and (3) 'particularly, the purpose and flagrancy of the official misconduct.'" Shaw, 213 N.J. at 415 (quoting Brown, 422 U.S. at 602-04).

In State v. Smith, a case comparable to the present one, we applied the Brown factors and rejected the attenuation doctrine as a basis for upholding the search of a home. 155 N.J. 83, 100-01 (1998). There, based on an informant's unreliable tip, the police unconstitutionally detained the defendant on suspicion of drug dealing and seized from him the keys to his apartment, where he lived with his sister. Id. at 88-90, 101. The police learned that no one was in the apartment and that the

defendant's sister was hospitalized. Id. at 89. The police called and advised the sister that they had the apartment keys and secured her consent to enter and search the apartment. Id. at 89-90, 101. Using the keys unlawfully seized from the defendant, the police entered the apartment and discovered drugs -- the evidence used to bring criminal charges issued against him. Id. at 90.

Applying the Brown factors, we held that "the discovery of the drugs was a product of the unlawful seizure of the keys," despite the sister's consent, and suppressed the evidence. Id. at 100-01. We reasoned that although the sister's consent could not "be ascribed to a single reason or motive, it is clear that it was heavily influenced by the unlawful seizure of the keys from defendant." Id. at 101 (emphasis added). Accordingly, the sister's "consent was not an independent intervening circumstance" breaking the chain of causation stemming from the unlawful seizure of the defendant's keys. Ibid.; see also United States v. Damrah, 322 F. Supp. 2d 892, 901 (N.D. Ohio 2004) (suppressing evidence found in defendant's home because wife's consent to search was not intervening circumstance that "purged the taint of the agents' unlawful presence" in defendant's home).

B.

Applying those principles to the facts of this case leads to the ineluctable conclusion that the police misconduct is directly linked to the discovery of the cell phone, which therefore must be suppressed. Importantly, the State had the burden of proving attenuation -- a point ignored by the majority -- and failed to do so.

First, there was no temporal break between the officers' unconstitutional entry and presence in the home and the brother's search for the phone. When the brother arrived, the police officers had already unconstitutionally entered and occupied the home, conducted a sweep, gathered incriminating evidence (the cell phone case and defendant's camouflage shorts), and handcuffed defendant, who was seated on the living room couch. As soon as the brother and his parents came home, the officers stated that they were investigating the alleged theft of a cell phone by defendant. The brother asked an officer whether the police had found the cell phone, and the officer responded, no. Apparently, the brother believed the police had conducted an initial search. He had no way of knowing at the time that the four police officers were unlawfully on the premises.

Second, the State was required to prove that the constitutional violation of the family's home "did not lead to or significantly influence" the brother's actions. See Smith,

155 N.J. at 101. Whatever displeasure the brother might have expressed about defendant to the officers, his offer to find the cell phone cannot be disentangled from the presence of the officers as an occupying force in his family's home. The State did not show that the unconstitutional presence of the officers did not "heavily influence[]" the brother's decision to cooperate -- or at least was not one motive to do so. See ibid. It would hardly be surprising that the brother would want to hasten the departure of the police from his parent's home. The State did not show that the brother's action was voluntary, an act of unconstrained free will, given that the officers appeared unlikely to leave until they accomplished their mission. Would the brother have looked for incriminating evidence to damn his seventeen-year-old sibling in the absence of the unconstitutional police presence in his parent's home? Not likely. Cast in that light, there are no true intervening circumstances breaking the unconstitutional chain of causation.

Third, the officers' entry and occupation of the home was a flagrant violation of the family's -- not just defendant's -- constitutional rights under our Federal and State Constitutions. Without the justification of exigent circumstances, officers entered through a house window, went from room to room, surprised defendant's recently awakened sister, took defendant into custody, and gathered evidence. The exclusionary rule, if

nothing else, is directed at deterring the police from unlawfully entering the sanctity of the home and exploiting their unconstitutional conduct, as occurred in this case.

II.

In conclusion, the State failed to carry the burden of proving that the police misconduct did not significantly influence the brother's decision to search for the cell phone. Because the taint from the unconstitutional police occupation of defendant's home was not purged by the brother's cooperation with the police, the ultimate seizure of the phone by the police violated both the Fourth Amendment and Article I, Paragraph 7 of our State Constitution. Unlike the majority, I would apply the exclusionary rule to this flagrant violation of the right of a family to be secure in their home from unreasonable searches and seizures.

I therefore respectfully dissent.

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1624-14T2

STATE OF NEW JERSEY

IN THE INTEREST OF J.A.,

Juvenile-Appellant.

Submitted January 26, 2016 – Decided February 29, 2016

Before Judges Guadagno and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FJ-03-1352-14.

Joseph E. Krakora, Public Defender, attorney for appellant (Susan Remis Silver, Assistant Deputy Public Defender, of counsel and on the brief).

Robert D. Bernardi, Burlington County Prosecutor, attorney for respondent (Bethany L. Deal, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Juvenile defendant J.A. appeals his adjudication of delinquency for second-degree robbery, arguing that the warrantless search and seizure of a stolen cell phone was not justified by consent or an exception to the warrant requirement. He further argues that his sentence is excessive.

We glean the following facts from the record. On May 30, 2014, Officer Jesus Serrano was dispatched to investigate a report of a "strong arm robbery" at a bus stop in Willingboro. Serrano spoke with the victim, who reported that while he was waiting at the bus stop, a black male wearing a hooded sweatshirt and camouflage shorts asked to use his cell phone. When the victim produced his phone, the suspect punched him in the arm and ran off with it. He described the phone as a gold and white Apple iPhone with a distinctive pink glittery case.

Officer Serrano assisted the victim in activating the phone's "Find my iPhone" feature, an application which tracks the location of a stolen or misplaced Apple device through the use of GPS technology. See Find My iPhone, http://www.apple.com/icloud/find-my-iphone.html. The application indicated the victim's phone was located at a house on Shelbourne Lane, a few blocks away from the bus stop. Officer Serrano called for assistance and proceeded to the address.

Officer Serrano testified that he and the other officers were familiar with the house and believed it to be vacant based on their past experience. Serrano looked through a window on the first floor of the house and noticed a pink glittery phone case, matching the description given by the victim, on a bed.

One of the responding officers, Sharif Hewlett, testified he thought the house was vacant because "[t]here was no mail, no cars, no nothing . . . ." He noted there are about 1,500 vacant homes in Willingboro and often it is difficult to determine if a house is vacant because sometimes people just move out, leaving furniture and belongings.

The officers knocked on the door for approximately one minute. After receiving no response, Hewlett and fellow officer William J. Spanier found an unsecured kitchen window and entered the house.

Once inside, they encountered a young woman, later identified as J.A.'s sister, who had apparently been sleeping in another room. The officers explained why they were there and asked if there was anyone else in the house, to which she "shook her head like she didn't know."

Officer Hewlett testified that he wanted to continue searching the house for the young woman's safety, to make sure there was no one hiding there. The officers continued their search, looking in places where someone could be hiding.

Officers Hewlett and Spanier also saw the pink glittery phone case on a bed in one of the back rooms. Officer Hewlett also observed a pair of camouflage shorts on the floor. The officers finally found J.A. hiding in an upstairs bedroom. They

handcuffed him and brought him downstairs. J.A. denied involvement in the robbery.

Detective Edward Walker was dispatched to the location. A few minutes after Walker's arrival, J.A.'s brother, R.B., arrived, followed by J.A.'s mother and step-father. Detective Walker testified that J.A.'s mother was irate with her son and gave the officers verbal consent to search the house. J.A.'s mother told Walker she was "sick of [J.A.'s] S-H-I-T" and that she had warned J.A. that "if he comes here acting up he's got to go." After giving her verbal consent to search, J.A.'s mother signed a written consent form.

J.A.'s brother, R.B., then told officers that if the phone was not in J.A.'s room, it would be in the room of their younger brother, T.J. R.B. then proceeded upstairs, followed by Detective Walker, and went to a closet in T.J.'s room, pulled out the phone, and handed it to Detective Walker, saying "is this what you're looking for?" Detective Walker testified he did not ask R.B. to search T.J.'s room or any other room in the house and that R.B. did so of "his own volition." He also confirmed that no evidence was seized until after J.A.'s mother had given consent to search the house.

After J.A. was arrested, the victim was brought to the Shelbourne Lane address, but was not able to identify J.A. J.A.

was then taken to the Willingboro police station where he was advised of his Miranda[1] rights by Detective Walker. J.A.'s mother was not present when the rights were read to him and Walker did not realize that J.A. was under eighteen. J.A. admitted to taking the cell phone from the victim.

J.A. was charged with committing an act that would have constituted second-degree robbery, N.J.S.A. 2C:15-1(a)(1), if committed by an adult. J.A. filed motions to suppress statements made to police and evidence seized during the search. The trial court held a suppression hearing and heard the testimony of Officers Serrano, Spanier, and Hewlett, and Detective Walker.

At the conclusion of the hearing, the judge suppressed J.A.'s confession because the police questioned him without his mother being present. As to the seizure of the cell phone, the judge found that the officers' initial search was within the bounds of a valid "protective sweep," and that J.A.'s mother subsequently consented to the search and her consent was voluntary.

The judge noted that the timing of the search was crucial to his ruling. Because the officers were directed to the

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

location by the iPhone tracking feature immediately after the robbery occurred, they had reason to believe that "since the phone was in the house that perhaps the robber was in the house[.]" After knocking with no answer, the officers entered through an unsecured window "in order to secure the interior of the home, i.e., check to make sure . . . that the robber fleeing from the scene did not burst into the home of innocent civilians and may have been holding them hostage inside." The judge implied this may not have been an acceptable course of action had the officers not arrived at the home immediately after the robbery took place.

The judge qualified his decision by cautioning that the 1,500 abandoned or unoccupied properties in Willingboro did not give the police "carte blanche to run around, look at a house, and if there's no car in the driveway to enter the home on the theory that it is abandoned."

Finally, the judge found that the victim's iPhone cannot be suppressed because it was seized by J.A.'s brother and handed to the police, thus there was no state action in the seizure. Although law enforcement "cannot use civilians as agents to conduct searches or to secure information that the officer could not himself . . . obtain," there is nothing to suggest that

J.A.'s brother was acting at the direction of law enforcement when he found the phone and gave it to police.

The judge concluded that "law enforcement did not conduct a search even though they were authorized to do so, and there is nothing in the record to suggest that the actions of [J.A.'s] brother were not totally voluntary."

At trial, the judge heard the testimony of the victim, along with Officers Serrano, Spanier, and Hewlett, and Detective Walker. J.A. did not testify and called no witnesses. The judge determined that the State had proven beyond a reasonable doubt that J.A. committed the robbery.[2]

The judge found aggravating factors (c), (d), (g), (i), and (*l*), and no mitigating factors. He noted J.A. had a long history of prior adjudications, two of which would be crimes if committed by an adult; that J.A. had no respect for authority or the rights of others; and that he needed to be deterred since he had failed to take advantage of the numerous rehabilitative opportunities presented to him. The judge imposed a two-year custodial term at the New Jersey Training School for Boys, followed by an eight-month term of supervised release, fines, and penalties.

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[2] The judge mistakenly cited the burglary section, N.J.S.A. 2C:18-2(a), rather than the robbery section, N.J.S.A. 2C:15-1(a)(1) in the Juvenile Order of Disposition.

On appeal, J.A. raises the following points:

POINT I

THE WARRANTLESS ENTRY INTO J.A.'S HOME VIOLATED HIS RIGHTS UNDER THE 4TH AMENDMENT TO THE FEDERAL CONSTITUTION AND ARTICLE I, PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION BECAUSE POLICE HAD NO OBJECTIVE BASIS TO FIND THE HOME ABANDONED, NO JUSTIFICATION FOR A PROTECTIVE SWEEP, AND NO CONSENT BEFORE CONDUCTING THE SEARCH.

A. POLICE HAD NO OBJECTIVE, REASONABLE BASIS TO CONCLUDE THAT J.A.'S HOME WAS ABANDONED.

B. POLICE HAD NO REASONABLE BASIS TO CONDUCT A PROTECTIVE SWEEP OF J.A.'S HOME.

C. J.A.'S MOTHER'S CONSENT TO THE SEARCH WAS NOT VOLUNTARY BECAUSE THE POLICE HAD ALREADY COMPLETED THEIR INITIAL SEARCH WHICH REVEALED THE PHONE CASE AND CAMOUFLAGE SHORTS.

D. THE STATE FAILED TO PROVE THAT THE CELL PHONE WAS SEIZED AFTER [J.A.'S] MOTHER CONSENTED TO A SEARCH OF THE HOME.

E. THE FACT THAT J.A.'S BROTHER WAS THE ONE WHO LOCATED THE PHONE IS IRRELEVANT BECAUSE HE WAS ACTING AS AN AGENT OF THE POLICE.

POINT II

THE TRIAL COURT IMPOSED AN EXCESSIVE 2 YEAR DISPOSITION AT THE NEW JERSEY TRAINING SCHOOL FOR BOYS WITHOUT PROPERLY CONSIDERING J.A.'S BEST INTEREST OR MITIGATING FACTORS ON THE RECORD.

In reviewing a decision on a motion to suppress, we must uphold the factual findings of the trial court's decision as long as they are supported by sufficient credible evidence in the record. State v. Elders, 192 N.J. 224, 243 (2007). We accord deference to those findings which are substantially influenced by the trial court's opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy. State v. Johnson, 42 N.J. 146, 162 (1964). We will only disturb a trial court's factual findings if they are "so clearly mistaken 'that the interests of justice demand intervention and correction.'" Elders, supra, 192 N.J. at 244 (quoting Johnson, supra, 42 N.J. at 162).

J.A. argues that the officers had no reason to believe the Shelbourne Lane residence was abandoned, and the judge erred in finding the officers' search constituted a protective sweep because that doctrine applies only when law enforcement is already lawfully inside a home.

"A search conducted without a warrant is presumptively invalid, and the burden falls on the State to demonstrate that the search is justified by one of the 'few specifically established and well-delineated exceptions' to the warrant requirement." State v. Frankel, 179 N.J. 586, 598 (2004)

(quoting Mincey v. Arizona, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412, 57 L. Ed. 2d 290, 298-99 (1978)).

Proof of both exigent circumstances and probable cause "may excuse police from compliance with the warrant requirement." State v. Walker, 213 N.J. 281, 289 (2013) (quoting State v. Bolte, 115 N.J. 579, 585-86, cert. denied, 493 U.S. 936, 110 S. Ct. 330, 107 L. Ed. 2d 320 (1989)). In determining whether the circumstances in a particular case are exigent, courts consider several factors:

> (1) the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) reasonable belief that the contraband is about to be removed; (3) the possibility of danger to police officers guarding the site of contraband while a search warrant is sought; (4) information indicating the possessors of the contraband are aware that the police are on their trail; (5) the ready destructibility of the contraband and the knowledge that efforts to dispose of narcotics and to escape are characteristic behavior of persons engaged in narcotics traffic; (6) the gravity of the offense involved; (7) the possibility that the suspect is armed; (8) the strength or weakness of the facts establishing probable cause[;] and (9) the time of the entry.
>
> [State v. Deluca, 325 N.J. Super. 376, 391 (App. Div. 1999), aff'd, 168 N.J. 626 (2001).]

"[E]xigent circumstances will be present when inaction due to the time needed to obtain a warrant will create a substantial likelihood that the police or members of the public will be

exposed to physical danger or that evidence will be destroyed or removed from the scene." State v. Johnson, 193 N.J. 528, 553 (2008), certif. denied, 201 N.J. 272 (2010).

In State v. Cassidy, the Court held circumstances are exigent "when they 'preclude expenditure of the time necessary to obtain a warrant because of a probability that the suspect or the object of the search will disappear, or both.'" 179 N.J. 150, 160 (2004) (quoting State v. Smith, 129 N.J. Super. 430, 435 (App. Div.), certif. denied, 66 N.J. 327 (1974)).

Guided by these principles, we are satisfied the record evidence supports the trial court's finding of both probable cause and exigent circumstances for the initial entry of the police into the home without a warrant.

The record presents the novel aspect of cutting-edge technology,[3] which allowed police to track J.A. by following the stolen iPhone's signal to the Shelbourne Lane address within minutes of the robbery. Some corroboration of the phone's presence in the home was immediately obtained when Officer Serrano looked through a window and saw a distinctive pink glittery case matching the description provided by the victim.

[3] Apple introduced the Find My iPhone feature in 2011. https://www.apple.com/pr/library/2011/10/04Apple-to-Launch-iCloud-on-October-12.html

Based on the signal transmitted by the stolen iPhone emanating from the Shelbourne Lane residence and the subsequent corroborative observation of the case inside the same residence, the officers had a reasonable and well-grounded belief that the person who robbed the victim minutes earlier was inside the home.

We must also consider whether Officer Serrano's pursuit of J.A., contemporaneously guided by signals emitted from the iPhone, fell under the "hot pursuit" doctrine and constituted a valid warrantless entry into the Shelbourne Lane house. In Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 297-98, 87 S. Ct. 1642, 1645-46, 18 L. Ed. 2d 782, 786-87 (1967), the Supreme Court recognized the right of police, who had probable cause to believe that an armed robber had entered a house a few minutes before, to make a warrantless entry to arrest the robber and to search for weapons.

In Hayden, police received information from witnesses that a suspect in an armed robbery had fled to a specific address. Ibid. Within minutes, the police arrived and searched the residence, finding the defendant and his weapons. Ibid. In upholding the warrantless search and seizure, the Supreme Court emphasized the short time between the suspect's flight into the residence and the officers' arrival. Id. at 298, 87 S. Ct. at

1646, 18 L. Ed. 2d at 787. In United States v. Santana, the Court concluded that although hot pursuit required some sort of a chase, "it need not be an extended hue and cry 'in and about [the] public streets.'" 427 U.S. 38, 43, 96 S. Ct. 2406, 2410, 49 L. Ed. 2d 300, 305 (1976).

In State v. Davis, we held the "hot pursuit" exception applied where the victim told officers the suspect in an armed robbery was at a specific address and the officers "within minutes took up [the] pursuit." 204 N.J. Super. 181, 184 (App. Div. 1985), certif. denied, 104 N.J. 378 (1986),

Had Officer Serrano identified J.A. as the suspect and physically followed him to the Shelbourne Lane house, the hot pursuit doctrine, in all likelihood, would have permitted the warrantless entry. Instead of observing J.A.'s retreat to his home, the officer tracked him by following the signals emitted from the victim's stolen phone; those signals led the officer directly to J.A.'s home shortly after the robbery.

J.A.'s juvenile complaint indicates the robbery took place at 9:17 a.m. at the bus stop located at Levitt Parkway and Babbitt Lane. After J.A. was arrested, the victim was driven to the Shelbourne Lane address, three blocks from the bus stop, to attempt to identify J.A. as his assailant. Records indicate this showup occurred at 9:50 a.m. Thus, it took less than

thirty-five minutes from the time of the robbery for the police to track J.A. to Shelbourne Lane and arrest him. Clearly, there was a close temporal link between a serious criminal event, during which physical force was used against the victim, and the police pursuit that resulted in a warrantless entry. The record supports the trial court's finding that the officers were directed by the iPhone tracking feature to J.A.'s home immediately after the robbery occurred.

The technology that led police to J.A.'s home provided some of the exigency supporting their entry. As Officer Serrano explained, the Find My iPhone application emitted a tracking signal only when the phone was turned on. Two minutes after Officer Serrano activated the Find My iPhone application, the phone was turned off. Serrano felt immediate action was required because once the phone was turned off, it could be moved and the GPS capabilities would not function.

Serrano's concern was reasonable as the small cell phone could easily have been destroyed or hidden, and was the only physical evidence linking J.A. to the robbery. "Generally, when there is probable cause to believe a defendant has committed a crime and eluded apprehension by the police by retreating into his home, there is authority for the police, who are in immediate or continuous (i.e., 'hot') pursuit, to follow the

fleeing felon, and there is a reasonable expectation that a delay in obtaining a warrant would result in the destruction of evidence." State v. Laboo, 396 N.J. Super. 97, 103 (App. Div. 2007). We are satisfied that the police acted reasonably within the meaning of the Fourth Amendment in entering the residence to secure the area, determine whether there was any danger to anyone in the house, and prevent destruction of the proceeds of the robbery.

J.A. next argues that the evidence recovered after his mother gave consent to search the house should be suppressed because her consent was not given voluntarily. He reasons that his mother's consent was irrelevant because the officers had observed the items that were eventually seized while they were conducting their initial search, before obtaining consent. Thus, he argues that his mother's consent was not knowing and voluntary because she "might well have deemed it pointless to refuse . . . ."

Preliminarily we note that Officers Serrano, Spanier, and Hewlett all testified that the phone case was observed during their initial search, and Officer Spanier stated that the phone case was not seized during the initial search for the suspect. Similarly, the camouflage shorts were observed during the initial search, but not seized.

Our Supreme Court has instructed that protective sweeps are permissible where "(1) law enforcement officers are lawfully within the private premises for a legitimate purpose . . . and (2) the officers on the scene have a reasonable articulable suspicion that the area to be swept harbors an individual posing a danger." State v. Davila, 203 N.J. 97, 125 (2010). When those conditions are met, the sweep must be cursory, and "limited in scope to locations in which an individual could be concealed." Ibid.

Here, the officers were legally within the premises because of the doctrine of exigent circumstances, and had a reasonable articulable suspicion that the robbery suspect was inside as well. Due to the nature of the crime, it was reasonable for officers to assume that the suspect could pose a danger to themselves or others.

The officers only looked in locations where a person could be hiding and did not search for evidence of the robbery at this time. Therefore, their observation of the phone case on a bed and the camouflage shorts on the floor was incidental, and not improper.

Notwithstanding exigent circumstances, to justify a warrantless consent search, the State is obligated to prove that the person who provided consent did so voluntarily and that she

knew of her right to refuse consent to the search. State v. Johnson, 68 N.J. 349, 354 (1975). Consent must be unequivocal and specific, and freely and intelligently given. State v. King, 44 N.J. 346, 352 (1965).

A written consent is the most effective way for the State to meet its burden of showing a voluntary and knowing consent. State v. Daley, 45 N.J. 68, 76 (1965) (The existence of a written waiver points strongly to the fact that the waiver was specific and intelligently made.).

Detective Walker testified that J.A.'s mother gave verbal consent to search the house upon her arrival and later signed a written consent, which provided that she had the "right to refuse to allow the search," and that if she did refuse, her "refusal will be respected."

The trial judge found that J.A.'s brother arrived two to three minutes after Detective Walker, and J.A.'s mother arrived shortly thereafter, and "initially gave verbal consent and then she was provided with the consent form . . . ." The judge also found that, prior to the execution of the written consent, neither Detective Walker nor any other officer had at that point conducted a search of the residence.

There is no evidence in the record to suggest that J.A.'s mother was hesitant in giving consent to the search. On the

contrary, Detective Walker testified that she seemed "very upset, very irate." The trial judge found "[t]here is no evidence whatsoever in the record to suggest that the consent of [J.A.'s mother] was, A, not voluntary; that, B, [she] did not have a full opportunity to read the document in question; and that when she signed it, she intended to permit law enforcement to search the residence . . . ."

J.A. next argues that because the record reflects that J.A.'s brother arrived before his mother, it is unclear whether the phone was seized before or after his mother gave her consent. He places emphasis on the following passage from Detective Walker's testimony, concluding that there is evidence in the record that the cell phone was retrieved before consent was given:

> THE COURT: — just to clarify, Detective Walker . . . you arrived at the scene. Again there were other fellow law enforcement officers there. [R.B.], the brother of [J.A.], arrives two or three minutes thereafter. [J.A.'s mother] arrives shortly after that, correct?
>
> THE WITNESS: Yes, sir.
>
> . . . .
>
> THE COURT: Okay. Having obtained consent to search the residence, do I understand that [R.B.] was then sent into the residence and returned with the pink glittery cell phone that he claimed he found in the second floor

> closet belonging to one of his other brothers, T.J., correct?
>
> THE WITNESS: That would not be correct, Your Honor.
>
> . . . .
>
> THE WITNESS: [R.B.] arrived on the location, said hey, guys. What's going on. He was explained an ongoing investigation was being conducted where his brother — it was alleged that his brother robbed somebody of their cell phone. . . . He said [did] you guys find the phone? I said nope. He goes and then [R.B.] stated, oh, if it's not in his room, it's probably in T.J.'s room cause they're like that. . . . And he walked upstairs and he proceeded to look in, I guess . . . T.J.'s room . . . and he says is this what you're looking for? . . . Might have been all but a minute if that.

J.A. claims that the phone was found "well before J.A.'s mother arrived at the home and consented to the search." However, this testimony does not support that conclusion. Rather, it appears that Detective Walker intended to clarify that J.A.'s brother was not "sent" in to find the phone, but rather acted of his own volition.

The trial judge's factual findings reflect the testimony of the officers and Detective Walker; the judge found that J.A.'s mother "gave verbal consent to search the residence and subsequent to that . . . a signed consent form [was] executed by [J.A.'s] mother." At this point, Detective Walker was about to

execute a consent search when J.A.'s brother voluntarily retrieved the cell phone and handed it to him.

The judge found the officers' testimony established a timeline consistent with a valid search. We are satisfied that there is adequate evidence in the record to support these findings.

Finally, J.A. claims that, given the minimal nature of the robbery, J.A.'s expressed commitment to turning his life around, and the fact that the trial judge misunderstood J.A.'s detention history, the judge erred in sentencing him to two years at the New Jersey Training School for Boys.

"The rehabilitation of juvenile offenders is the goal of the juvenile justice system." State in Interest of K.O., 217 N.J. 83, 92 (2014). The Juvenile Code "balances its intention to act in the best interests of the juvenile and to promote his or her rehabilitation with the need to protect the public welfare." Ibid. "While rehabilitation of juveniles has historically been at the heart of juvenile justice, modern experiences with serious juvenile crimes have elevated the importance of punitive sanctions in juvenile dispositions." Ibid. (citations omitted).

The trial judge first found aggravating factor (c), the character and attitude of the juvenile indicate he is likely to

commit another offense. N.J.S.A. 2A:4A-44(a)(1)(c). The judge relied on J.A.'s past history, describing it as "one juvenile act after another, one juvenile court type intervention, then another act of delinquency," and the fact that the victim would have been visibly vulnerable to J.A., making the offense "predatory" in nature.

The judge also found factor (d), the juvenile's prior record and the seriousness of any acts for which the juvenile has been adjudicated delinquent, and factor (g), the need for deterring the juvenile and others from violating the law. N.J.S.A. 2A:4A-44(a)(1)(d),(g). These factors were accorded "overwhelming weight" because the judge found J.A. "has been to every place he could be in the juvenile justice system," including the Training School for Boys at Jamesburg, and nothing has succeeded in deterring him. The judge noted that J.A. previously received a suspended sentence of two years at Jamesburg and a two-year probation, but he never actually served time at Jamesburg.

The judge also found factor (i), the juvenile was adjudicated on two separate occasions of acts which, if committed by an adult, would constitute crimes, and factor (*l*), the threat to the safety of the public or any individual posed by the child. N.J.S.A. 2A:4A-44(a)(1)(i),(*l*). The court

determined that "based on his behaviors the court cannot help but conclude that he is a threat to the safety of the public and that is where this court finds itself when it reaches a point where it has to deviate from the mantra and again act consistent with public safety."

The judge found no mitigating factors and concluded that "eventually the hour glass runs out, that [J.A. has had] each and every opportunity presented to [him] and [he did] not take advantage of it." The judge's decision finds ample support in the record.

As the judge mistakenly cited the burglary section, N.J.S.A. 2C:18-2(a), rather than the robbery section, N.J.S.A. 2C:15-1(a)(1) in the Juvenile Order of Disposition, we remand for the correction of this clerical error.

The adjudication of delinquency is affirmed and the matter is remanded for correction in conformity with this opinion.