

Garden State CLE presents:

# Fourth Amendment Defenses in NJ DWI Cases



Lesson Plan

# Foreword

**The recovery of evidence supporting a charge of driving while intoxicated can often be challenged and excluded from use at trial as a result of a motion to suppress evidence under Rule 7:5-2. The following materials will focus exclusively on constitutional justifications for the search and seizure of both direct and circumstantial evidence in drunk driving cases that may be subject to suppression.**



# Part I

## Motor Vehicle Stops



# **a. In General: Reasonable Suspicion & Probable Cause**



## **Introduction:**

**A motor-vehicle stop by the police, however brief or limited, constitutes a ‘seizure’ within the meaning of the Fourth Amendment. Accordingly, the police have an obligation to act reasonably. This means that in order to conduct a search of the vehicle or its contents the police must either have a search warrant or or an applicable exception to the Fourth Amendment. It also means that the police must conduct their search in a reasonable manner.**

**Under both the Fourth Amendment and [Article I, Paragraph 7](#), ordinarily, a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense to justify a stop. The heart of constitutional analysis is whether the motor-vehicle stop was unreasonable, recognizing that raw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop**

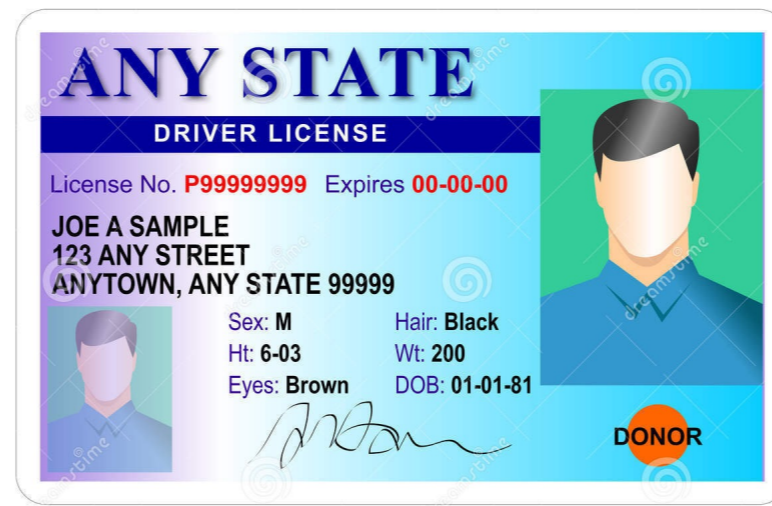
## b. Licensing & Registration

### Delaware v. Prouse, 40 US 648 (1979)

The Fourth and Fourteenth Amendments are implicated in this case because stopping an automobile and detaining its occupants constitute a “seizure” within the meaning of those Amendments, even though the purpose of the stop is limited and the resulting detention quite brief.

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Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.



## Motor Vehicle Violations

Whren v. United States, 517 US 806 (1996)

### Probable Cause & “Objectively Reasonable” Test Adopted

**The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.**



## **c. Defenses based upon traffic stops**

### **Mistake of Fact:**

**State v. Pitcher, 379 N.J.Super. 308 (App. Div. 2005)**

### **Mistake of Law:**

**State v. Puzio, 379 NJ Super. 378 (App. Div. 2005)**

**Hein v. North Carolina, 135 S. Ct. 530 (2014)**

**State v. Sutherland, \_\_\_ NJ Super. \_\_\_ (App. Div. 2016)**

**State v. Scriven, \_\_\_ NJ \_\_\_ (2016)**

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### **Common Police Mistakes of Law:**

**NJSA 39:3-60 State v. Witt, 435 NJ Super. 608 (App. Div. 2014)**

**NJSA 39:4-88 State v. Woodruff, 403 NJ Super. 620 (Law Div. 2008)**

**NJSA 39:4-126 State v. Williamson, 138 NJ 302 (1994)**



## **d. Road Blocks – Federal Development**

**[Common Element in all roadblock cases – Lack of individualized suspicion]**

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**1. US v. Martinez-Fuerte, 428 US 543 (1976) – Fixed check Points near border authorized.**

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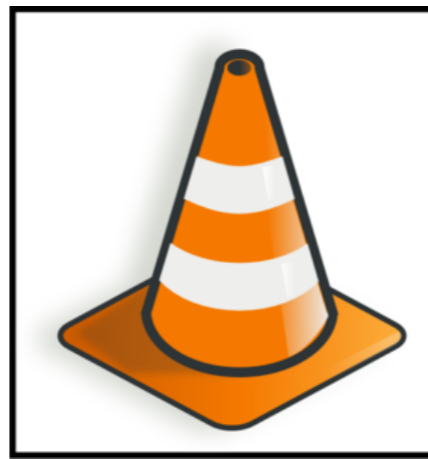
**2. [Brower v. County of Inyo, 489 U.S. 593, 597\(1989\)](#)**

**A Seizure under the 4<sup>th</sup> Amendment occurs only when there is a governmental termination of freedom of movement *through means intentionally applied.***

**A roadblock constitutes a seizure within the meaning of the 4<sup>th</sup> Amendment.**

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**3. Michigan v. Sitz, 496 U.S. 444 (1990) – (DWI Road Blocks Reasonable)**



**4. City of Indianapolis v. Edmond, 531 U.S. 32 (2000) (General Crime Control Road Blocks Unreasonable)**

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**5. Illinois v. Lidster, 540 U.S. 419 (2004) (Police Informational Road Blocks Reasonable)**



# **Road Blocks Established under N.J. Constitution of 1947**

## **1. State v. Kirk, 202 N.J. Super. 28 (App. Div. 1985)**

## **2. Drunk Driving Road Blocks Following Kirk**

**Intersecting streets**— When the street leading to a roadblock has intersecting street, the police must advise motorists by warning signs that any attempt to utilize those intersecting street will result in a motor vehicle stop. [State v. Badessa, 373 N.J. Super. 84, 860 A.2d 962 \(App. Div. 2004\)](#), rev'd on other grounds, [185 N.J. 303, 885 A.2d 430 \(2005\)](#).

**Remand for new trial**— On a municipal appeal, a Law Division judge may raise concerns as to the validity of a DWI road block and on that basis, reverse a municipal court finding of guilt and remand for a new trial. [State v. McLendon, 331 N.J. Super. 104, 751 A.2d 148 \(App. Div. 2000\)](#).

**Procedures to be followed**— All appropriate procedures were followed in establishing a DWI road block. [State v. Reynolds, 319 N.J. Super. 426, 725 A.2d 1129 \(App. Div. 1998\)](#).

All appropriate procedures were followed in establishing a DWI roadblock. [State v. Moskal, 246 N.J. Super. 12, 586 A.2d 845 \(App. Div. 1991\).](#)

**Opportunity to avoid road block**—Sobriety roadblock is not required, as a condition of its constitutionality under the Fourth Amendment and the New Jersey Constitution, “to provide opportunity for motorists to avoid checkpoint or refuse to participate.” The option of permitting motorists to choose whether they desire to cooperate with checkpoint will reduce its effectiveness, detract from its deterrent effect, and on occasion create safety hazards. [State v. Hester, 245 N.J. Super. 75, 81, 584 A.2d 256 \(App. Div. 1990\).](#)

**Advance publicity**—Advance publicity is not an absolute requirement for the establishment of a DWI roadblock. [State v. DeCamera, 237 N.J. Super. 380, 568 A.2d 86 \(App. Div. 1989\).](#)

**Selection of road block location**—Roadblock was properly selected based upon statistical study of the number of bars in the area and the number of reported drunk-driving accidents in the vicinity of the roadblock. [State v. Mazurek, 237 N.J. Super. 231, 567 A.2d 277 \(App. Div. 1989\).](#)



**Unreasonable road block**— Roadblock established for purpose of detecting persons operating vehicles who were transporting controlled substances or were under influence of drugs or alcohol violated commerce clause by imposing burden on interstate commerce substantially greater than any benefit derived on account of the imposition, and by isolating New Jersey from a problem common to all states in a manner which for several hours halted all commerce on one of the nation's busiest interstate thoroughfares. [State v. Barcia, 228 N.J. Super. 267, 549 A.2d 491 \(Law Div. 1988\).](#)

**No command site selection** - A roadblock established without proper command supervision is unreasonable. [State v. Egan, 213 N.J. Super. 133, 516 A.2d 1115 \(App. Div. 1986\).](#)

**Evading road block**— Action of an intoxicated driver in attempting to evade a road block constituted sufficient suspicion to effect a motor vehicle stop in the vicinity of a road block that was properly constituted. [State v. Weber, 220 N.J. Super. 420, 532 A.2d 733 \(App. Div. 1987\).](#) See also State v. Badessa, 373 NJ Super. 84 (App. Div. 2004) (Police should post signs warning of evading the road block – Reversed on other grounds, State v. Badessa, 185 NJ 303 (2004).

**Compliance with requirements in State v. Kirk**—The establishment of a DWI interdiction road block by the police on the eve of Thanksgiving fully complied with all the requirements of State v. Kirk and the later cases regulating road blocks. This decision contains excellent and comprehensive review of those cases. [State v. Thomas, 372 N.J. Super. 29, 855 A.2d 17 \(Law Div. 2002\).](#)

### **3. Other New Jersey Road Blocks**

**Stolen Motor Vehicles** - State v. Flowers, 328 NJ Super. 205 (App. Div. 2000) (probably bad law in light of *Edmond*).

**Administrative - Random motor vehicle emissions inspection road blocks**—Random roadside administrative inspection of defendant's vehicle was reasonable and did not violate defendant's constitutional rights. Accordingly, evidence that defendant was intoxicated, obtained as result of inspection, was admissible in DWI prosecution. [State v. Kadelak, 280 N.J. Super. 349, 655 A.2d 461 \(App. Div. 1995\).](#) (See also 258 NJ Super. 599 (App. Div. 1992))

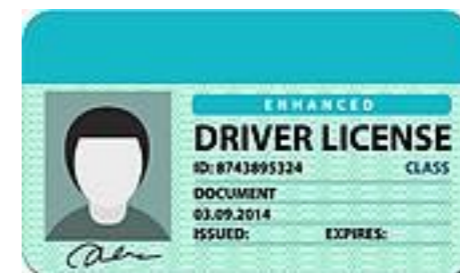


## **e. Mobile Data Terminal Data**

**[No expectation of Privacy on things displayed openly on vehicles – New York v. Class, 475 US 106 (1986)]**

### **1. State v. Parks, 288 N.J Super. 407, 411-412 (App. Div. 1996)**

**The State urges us to hold that once the officer learns from the mobile data terminal that the vehicle's owner does not have a valid driver's license, the officer is authorized to stop and detain any person driving that vehicle in order to check that person's identification. The information alone, then, would provide a police officer with an “articulable and reasonable suspicion” that the driver is unlicensed as soon as the computer search reveals the owner is unlicensed. *We* reject this broad brush approach in favor of further articulation of the facts supporting a reasonable suspicion. When there is additional evidence of defendant's identity as the driver of his vehicle at a particular time, it may be inferred that the owner was the driver. We hold that when the officer's observation of the driver indicates that the driver could reasonably be the person described in the DMV records, then the dictates of *Delaware v. Prouse*, *supra*, and *State v. Davis*, *supra* are satisfied.**



## 2. State v. Donis, 157 N.J. 44, 58 (1998)

**Finally, we observe that in both of these appeals, petitioners' convictions were based on license plate identification, and that additional evidence linked each petitioner to the offense. The police officers in their initial use of MDT learned that the vehicles' owners had suspended licenses. That information itself gave rise to the reasonable suspicion that the vehicle was driven in violation of the motor vehicle laws and was in itself sufficient to justify a stop. However, in addition to that information, the officers also had determined through a “match-up” that the drivers were the registered owners. On the descriptive information provided by the MDT and the “general match” of petitioners, the officers therefore had reasonable suspicion to believe that the drivers were violating the law.**

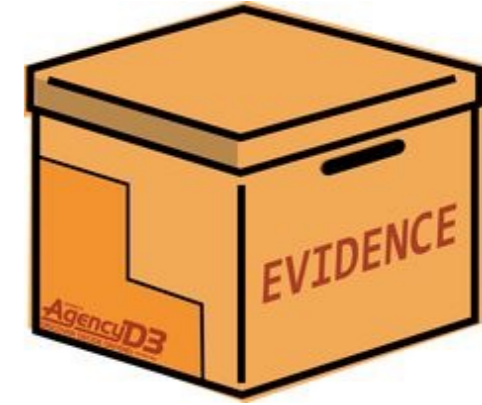


### 3. State v. Segars, 172 N.J 481, 496 (2002)

**When a defendant claims that an MDT check was based on his race, he bears the burden of establishing a *prima facie* case by producing relevant evidence that would support an inference of discriminatory enforcement. If the defendant does so, the burden shifts to the State to produce evidence of a race-neutral reason for the check. Ultimately, the defendant bears the burden of proving discriminatory treatment by a preponderance or greater weight of the credible evidence.**



## **f. Community Caretaking**



### **In the Context of a Motor Vehicle Search**

#### **1. Cady v. Dombrowski, 413 U.S. 433, 441 (1973) (Search)**

**Local police often have occasion to deal with vehicles in the performance of functions ‘totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. This has been described as the “community caretaking function.**

#### **2. State v. Diloreto, 180 N.J. 264, 282 (2004) (search)**

**We, therefore, hold that the police acted within the boundaries of our federal and State constitutions throughout the chronology of events. We hasten to add this cautionary note. The State should not construe our holding as approving wide application of the community caretaker doctrine in this setting. Rather, as suggested earlier, our disposition is the result of the facts before us, most particularly the NCIC missing person's report and the [other factors] discussed above. For the reasons already expressed, [those factors] triggered the officers' caretaker role and justified their conduct. The community caretaker doctrine remains a narrow exception to the warrant requirement. Consistent with that view, all future cases decided under that doctrine will turn strictly on their individual facts and will be subject, as always, to meticulous judicial review.**

# **In the Context of a Motor Vehicle Stop**

## **1. State v. Goetaski, 209 N.J. Super. 362, 366 (App. Div. 1986)**

**In the case before us, the facts were unusual enough for the time and place to warrant the closer scrutiny of a momentary investigative stop and inquiry. In this case, we will not substitute our judicial hindsight for what appears to us as a sound, non-pretextual [sic] exercise of curbstome judgment by the officer. But we do not hesitate to add that this stop is about as close to the constitutional line as we can condone.**



**2. State v. Martinez, 260 N.J Super. 75, 78 (App. Div. 1992)**

**We take notice, however, that operation of a motor vehicle in the middle of the night on a residential street at a snail's pace between five and ten m.p.h. is indeed “abnormal,” as the Trooper testified. Such abnormal conduct suggests a number of objectively reasonable concerns: (a) something might be wrong with the car; (b) something might be wrong with its driver; (c) a traffic safety hazard is presented to drivers approaching from the rear when an abnormally slow moving vehicle is operated at night on a roadway without flashers; (d) there is some risk that the residential neighborhood is being “cased” for targets of opportunity. Possibilities (a), (b) and (c) involve the “community caretaking function” expected of alert police officers. Possibility (d) implicates the “common-law right to inquire” based upon a founded suspicion that criminal activity might be afoot. It is appropriate to consider all of these applicable concerns and balance them against the minimal intrusion involved in a simple inquiry stop. We are satisfied on this balance that the stop was objectively reasonable and fell far short of the line of unconstitutionality we drew in *Goetaski*.**

**3. State v. Washington, 296 N.J Super. 569 (App. Div. 1997) (Slow speed & weaving)**

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**4. State v. Adubato, 420 N.J Super. 167 (App. Div. 2011) (Parked, speaking loudly on a cell phone)**

**5. State v. White, 359 N.J Super. 16, 25 (Law Div. 2002) (Taxi)**

**In fact, each of the caretaking cases which justified stopping was decided based on the abnormal operation of the vehicle indicating there may be some difficulty presented to the driver or hazards caused to others. Therefore, if a stop is not objectively reasonable under the community caretaking function, it is unconstitutional. The State has specifically relied upon the police officer's caretaking function to justify stopping the taxicab in which the defendant was a passenger. By doing so, the State concedes the fact that the officer had no articulable reasonable suspicion that an offense had been committed or was being committed prior to stopping and seizing the cab. Since there is no evidence of guilt other than the evidence obtained from the unlawful stop, the evidence is suppressed.**



# **g. Length of Detention Following M/V Stop**

## **1. State v. Dickey 152 NJ 468, 478-79 (1998)**

**Even a stop that lasts no longer than necessary to complete the investigation for which the stop was made may amount to an illegal arrest if the stop is more than “minimally intrusive.” In the absence of probable cause, the stop must first be found not unduly intrusive before any balancing of the government's interest against the individual's interest becomes appropriate. A detention that is the functional equivalent of an arrest must be supported by probable cause regardless of its duration.**

**Simply stated, an investigative stop becomes a *de facto* arrest when the officers' conduct is more intrusive than necessary for an investigative stop. Although there are no “bright line” tests to guide us, courts have identified several factors to aid in the analysis.**

**Time is an important factor in distinguishing between an investigative stop and a *de facto* arrest: There is no rigid time limitation on *Terry* stops, but a stop may be too long if it involves delay unnecessary to the legitimate investigation of the law enforcement officers. Another factor is the degree of fear and humiliation that the police conduct engenders.” The courts have also held that transporting a suspect to another location or isolating him from others can create an arrest. Additional factors that may weigh in favor of an arrest are subjecting a suspect to unnecessary delays, handcuffing him, or confining him in a police car.**

**2. Brendlin v. California, 127 S. Ct. 2403 (2007) (Passenger is seized within meaning of 4<sup>th</sup> Amendment)**

**3. State v. Sloan, 193 N.J. 423, 437 (2008) (NCIC Check not a search)**

**Are there other constitutional concerns when police access the NCIC database during a traffic stop? That question turns on the reasonableness of the detention following a lawful traffic stop in two interconnected respects. First, was the detention reasonably related in scope to the circumstances which justified the interference in the first place? Second, did the NCIC check unreasonably prolong the length of the stop?**



# Part II

## Orders to Exit Vehicle



## **a. The New Jersey View**

**Note – The key issue in these cases is the opportunity it provides police to view previously obscured evidence in plain view.**

**1. Operators - State v. Smith, 134 NJ 599 (1994)**

**2. Passengers - State v. Smith, 134 NJ 599, 618 (1994)**

**Although the *per se* rule under *Mimms* permits an officer to order the driver out of a vehicle incident to a lawful stop for a traffic violation, we decline to extend that *per se* rule to passengers. Instead, we determine that an officer must be able to point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle detained for a traffic violation.**



## **b. Unannounced Door Openings**

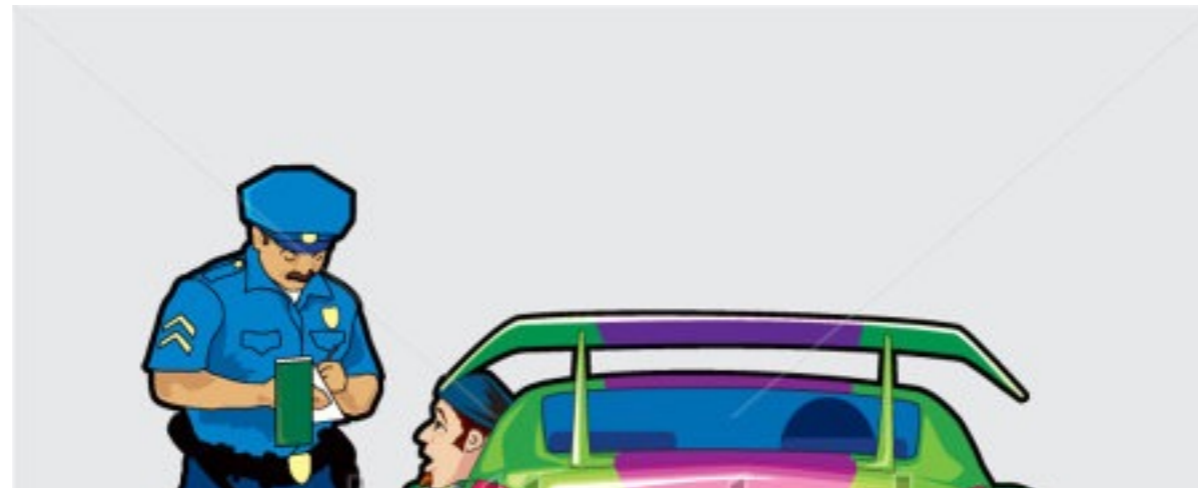
### **1. Passengers – State v. Mai, 202 N.J. 12, 22-23 (2010)**

**In the realm of defining reasonable searches and seizures, no meaningful or relevant difference exists between the grant of authority to order an occupant of a vehicle to exit the vehicle and the authority to open the door as part of issuing that lawful order. Plain logic demands that the principles that govern whether a passenger of a vehicle lawfully can be ordered out of the vehicle must apply with equal force to whether a police officer is entitled, as a corollary and reasonable safety measure, to open the door as part of issuing a proper order to exit.**



# Part III

## Questioning during the Stop



## **1. State v. Hickman, 335 N.J Super. 623, 633 (App. Div. 2000)**

**The few brief questions that Officer Thomas asked defendant before he revealed the cocaine in his shoe did not involve any coercion beyond that inherent in any police questioning of a citizen. When defendant was asked these questions, he was not in a hostile or intimidating atmosphere. He was simply sitting in a car which had been stopped for a motor vehicle violation. Most significantly, Officer Thomas did not subject defendant to any physical or mental abuse, and his questioning was exceedingly brief. Therefore, this case does not present any serious question as to the voluntariness of defendant's response.**

**Consequently, if a motor vehicle is subject to a valid police stop, the police may question the occupants, even on a subject unrelated to the purpose of the stop, without violating the Fourth Amendment, so long as such questioning does not extend the duration of the stop.**



# **Critical are admissions as to alcohol consumption, intoxication, etc.**

**See Berkemer v. McCarty, 104 S.Ct. 3138 (1984):**

**Roadside questioning of motorist detained pursuant to routine traffic stop does not constitute a “custodial interrogation” for purposes of the *Miranda* rule, so that pre-arrest statements motorist made in answer to such questioning are admissible against motorist.**



# Part IV

## Searches & Seizures of Physical Evidence

**CHAIN OF CUSTODY**

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Received By: \_\_\_\_\_  
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TRITECH-FORENSICS  
800.438.7664 • tritechforensics.com  
Recorder No.: TAGCC4X8

**- EVIDENCE -**

Submitting Agency: \_\_\_\_\_  
Case No.: \_\_\_\_\_ Item No.: \_\_\_\_\_  
Date of Collection: \_\_\_\_\_ Time of Collection: \_\_\_\_\_  
Collected by: \_\_\_\_\_  
Badge No.: \_\_\_\_\_  
Description of Enclosed Evidence: \_\_\_\_\_  
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Location Where Collected: \_\_\_\_\_  
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Type of Offense: \_\_\_\_\_  
Victim's Full Name: \_\_\_\_\_  
Suspect's Full Name: \_\_\_\_\_

TRITECH-FORENSICS  
800.438.7664 • tritechforensics.com  
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**- EVIDENCE -**

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## **a. Plain View Seizures - Elements**

**State v. Bruzzese, 92 NJ 210 (1983)**

- 1. Lawfully in the viewing area;**
- 2. Discovery of Evidence must be inadvertent;**
- 3. Probable cause to associate evidence with criminal activity.**

**Plain smell - The smell of marijuana (raw or burned) establishes probable cause to search and arrest. State v. Myers, 442 N.J.Super. 287 (App. Div. 2015)**



## **b. Search Incident to an Arrest**

**1. The ability of police to search the interior of a motor vehicle following the arrest of a recent occupant is no longer a viable option under both state and federal law.**

**State v. Eckel, 185 NJ 523 (2006)**

**Arizona v. Gant, 556 US 332 (2009)**

## **c. Automobile Exception to the Warrant Requirement**

### **1. Introduction - Historical Development**

**Carroll v. U.S., 267 U.S. 132 (1925)**

**Chambers v. Maroney, 399 U.S. 42 (1970)**

**Pennsylvania v. Labron, 518 U.S. 938 (1996)**

**State v. Alston, 88 NJ 211 (1981).**



**For cases on or after September 24, 2015:**

**State v. Witt, 223 NJ 409 (2015)**

**In *Alston*, we held that the automobile exception authorized the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous. In articulating that standard, we believed we were merely following the test set forth by the United States Supreme Court in *Chambers. Labron* and *Dyson* make clear that even an unforeseeability and spontaneity requirement is not part of the federal automobile exception.**



**Here, we part from the United States Supreme Court's interpretation of the automobile exception under the Fourth Amendment and return to the *Alston* standard, this time supported by [Article I, Paragraph 7](#) of our State Constitution. *Alston* properly balances the individual's privacy and liberty interests and law enforcement's investigatory demands. *Alston*'s requirement of “unforeseeability and spontaneity,” does not place an undue burden on law enforcement. For example, if a police officer has probable cause to search a car and is looking for that car, then it is reasonable to expect the officer to secure a warrant.**

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**Probable cause in a DWI is supplied by the nature of the offense in that evidence of intoxicated operation may be located within the vehicle.**

**See *State v. Irelan*, 375 N.J.Super. 100 (App. Div. 2005).**

## d. Protective Searches

### 1. Michigan v. Long, 463 US 1032, 1034 (1983)

In [Terry v. Ohio](#), we upheld the validity of a protective search for weapons in the absence of probable cause to arrest because it is unreasonable to deny a police officer the right “to neutralize the threat of physical harm,” when he possesses an articulable suspicion that an individual is armed and dangerous. We did not, however, expressly address whether such a protective search for weapons could extend to an area beyond the person in the absence of probable cause to arrest. In the present case, respondent David Long was convicted for possession of marijuana found by police in the passenger compartment and trunk of the automobile that he was driving. The police searched the passenger compartment because they had reason to believe that the vehicle contained weapons potentially dangerous to the officers. We hold that the protective search of the passenger compartment was reasonable under the principles articulated in *Terry* and other decisions of this Court.



## **2. State v. Lund, 119 N.J. 35, 48-49 (1990)**

**To sum up, we agree with the position of the Attorney General that the *Michigan v. Long* rule is sound and compelling precedent and should be followed to protect New Jersey's police community. We have applied the rule of that case, which incorporates the *Terry* protective-search principles, in the search of a car. In making this ruling, we have no doubt about the good faith of the officer on patrol. New Jersey, along with the United States Supreme Court, has recognized that the good faith of police officers is civil justification for their conduct. We know how hard it is for an officer on patrol to make split-second decisions that have to be analyzed months, if not years, later on a constitutional dimension.**



## **e. Consent Searches**

### **1. State v. Johnson, 68 NJ 349 (1975)**

**The requirement of proof that the defendant knew he had a right to refuse consent must be provide in every type of search case. Burden of proof on the State is by clear and convincing evidence to demonstrate consent was given voluntarily, without force, threat or coercion. Intoxication is always a factor on the voluntariness issue.**

**Defendant has the right to:**

**Refuse consent**

**Limit time**

**Limit place**

**Withdraw consent (Note this cannot be done when defendant is kept away from the search.)**



## **2. State v. Carty, 170 NJ 632 (2002)**

**We agree with the Appellate Division that consent searches following a lawful stop of a motor vehicle should not be deemed valid under *Johnson* unless there is reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity. In other words, we are expanding the *Johnson* two-part constitutional standard and holding that unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop to continue the detention after completion of the valid traffic stop, any further detention to effectuate a consent search is unconstitutional. A suspicionless consent search shall be deemed unconstitutional whether it preceded or followed completion of the lawful traffic stop. The requirement of reasonable and articulable suspicion is derived from our State Constitution and serves to validate the continued detention associated with the search. It also serves the prophylactic purpose of preventing the police from turning a routine traffic stop into a fishing expedition for criminal activity unrelated to the stop.**

**2. State v. Elders, 192 NJ 224 (2007) (Rule applies to disabled vehicles too)**

**3. State v. Domicz, 188 NJ 285, 305 (2006) (Does not apply to residences)**

## **f. Document Searches**

**State v. Keaton, 222 NJ 438 (2015)**

**In doing so, we find that the trooper was required to provide defendant with the opportunity to present his credentials before entering the vehicle. If such an opportunity is presented, and defendant is unable or unwilling to produce his registration or insurance information, only then may an officer conduct a search for those credentials. Because defendant was never provided with such an opportunity, we find that the trooper did not lawfully seize the contraband under the plain view doctrine. We also find that the community-caretaker doctrine is inapplicable because there was no need for an immediate warrantless search to preserve life or property.**



# Part V

## Searches of the Person



## **a. Breath Samples:**

**Implied consent (NJSA 39:4-50.2) or search incident to arrest:**

**Birchfield v. North Dakota, 136 S. Ct. 2160 (2016)**



## **b. Blood Samples:**

**Exigency, search warrants, incident to arrest & consent:**

**Missouri v McNeely, 133 S. Ct. 1552 (2013)**

**State v. Ravotto, 169 NJ 227 (2001)**



## **c. Urine:**

**Exigency, search warrants, incident to arrest & consent:**

**State v. Verpent, 221 NJ 494 (2015)**

**Jiosi v. Township of Nutley, 332 NJ Super. 169 (App. Div. 2000)**

**State v. Malik, 221 NJ Super. 114 (App. Div. 1987)**



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