Garden State CLE presents:

New Jersey Motor Vehicle Searches

Lesson Plan

Part I

Justification for

Motor Vehicle Stops

In General: Reasonable Suspicion

US v. Brignoni-Ponce, 422 US 873, 884 (1975) (Border Stops)

Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country

---

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.

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." Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of this provision. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. 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.

b. Road Blocks – Federal Development

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

----

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

----

2. Brower v. County of Inyo, 489 U.S. 593, 597(1989)

A Seizure under the 4th 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 4th Amendment.

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)

---

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))

c. 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 NJ 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

2. State v. Donis, 157 NJ 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 NJ 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.

d. 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 (Seizure)

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 curbstone 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 NJ 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 NJ Super. 569 (App. Div. 1997) (Slow speed & weaving)

---

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

---

5. State v. White, 359 NJ 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.

e. Mistakes of Fact or Law

1. State v. Pitcher, 379 NJ Super. 308 (App. Div. 2005)

(Mistake of Fact)

A seizure based on mistaken inclusion of, or failure to timely delete, a record of license suspension in data accessible to law enforcement officers through MDTs does not pose the same issue as the police conduct at issue in [other cited cases]. A license suspension, unlike a warrant or report of reasonable suspicion, is not a determination about the justification for a stop or arrest. The license suspension is simply factual information that leads to a suspicion of a violation of the motor vehicle laws, *i.e.,* one articulable fact. In this case, the officer's suspicion of unlicensed driving was based on two specific and articulable facts: the DMV record of the suspension of the car owner's license that was erroneously included in the data base; and, the officer's observation of a car registered to that driver being driven.

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

(Mistake of Law)
If officers were permitted to stop vehicles where it is objectively determined that there is no legal basis for their action, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive.We cannot countenance an officer's interference with personal liberty based upon an entirely erroneous understanding of the law.

f. Length of Detention Following Motor Vehicle 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 4th Amendment)

3. State v. Sloan, 193 NJ 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

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. The Federal View

1. Operators - Pennsylvania v. Mimms, 434 US 106 (1977)

2. Passengers - Maryland v. Wilson, 519 US 408 (1997)

c. Unannounced Door Openings

1. Passengers – State v. Mai, 202 NJ 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
Miranda and Motor Vehicle Stops

Right to Remain Silent during Motor Vehicle Stop

1. Berkemer v. McCarty, 468 US 420, 437-39 (1984)
Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely," First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.

Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree. Passersby, on foot or in other cars, witness the interaction of officer and motorist. This exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse.

Questioning during the Stop

2. State v. Hickman, 335 NJ 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.

Part IV
Searches & Seizures

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.

b. Search Incident to an Arrest

Chronology of the end of this search exception

1. New York v. Belton, 453 US 454, 460-461 (1981)

In order to establish the workable rule this category of cases requires, we read *Chimel* 's definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.

2. State v. Pierce, 136 NJ 184 (1994) (Traffic Offenses)

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

We decline to adopt *Belton* and its progeny because to do so would require us to accept a theoretically rootless doctrine that would erode the rights guaranteed to our own citizens by Article I, Paragraph 7 of our constitution-the right to be free from unreasonable searches and seizures. To us, a warrantless search of an automobile based not on probable cause but solely on the arrest of a person unable to endanger the police or destroy evidence cannot be justified under any exception to the warrant requirement and is unreasonable. We do not view Article I, Paragraph 7 as a procedural matter but as a reaffirmation of the privacy rights guaranteed to our citizens and of our duty as judges to secure them. So viewed, the *Belton* rationale simply does not pass muster.

4. Arizona v. Gant, 556 US 332 (2009) (Supreme Court adopts the NJ view)

c. Automobile Exception to the Warrant Requirement

1. Introduction - Historial 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)

2. New Jersey View

State v. Cooke, 163 N.J. 657, 667-668 (2000) **

The early federal cases focused on the inherent mobility of automobiles, which created exigent or emergent circumstances making it impracticable to obtain a warrant.. Later, the Supreme Court articulated an additional rationale based on a reduced expectation of privacy in motor vehicles

More recently, the Supreme Court has held that "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.

However….

This Court has repeatedly looked to exigent circumstances to justify warrantless automobile searches. Without a requirement of exigent circumstances, virtually every search of an automobile would be valid provided the police had probable cause to act. For example, under the rationale advanced by the State, a car parked in the home driveway of vacationing owners would be a fair target of a warrantless search if the police had probable cause to believe the vehicle contained drugs. Such a broad ruling has no basis in our case law.

27.

3. Development of Current New Jersey Law

State v. Dunlap, 185 NJ 543, 550-551 (2006)

There were at least ten officers present on the evening in question and even assuming that some were needed for other duties in connection with defendant's arrest and the on-going investigation, the State did not establish that an insufficient number **1283 would have been left to guard the car. To say that the late hour made access to a judge difficult or unpracticable, is to ignore the procedures in place for emergent duty judges in every vicinage and the existence, since 1984, of the telephonic warrant procedure. *R.* 3:5-3(b). Indeed, it is not without significance that the investigators here had time to call the prosecutor's office at about 10:00 pm and obtain verbal authorization for the consensual recording of defendant's conversation with [the female informant].

We have carefully reviewed this record in light of the State's claims and have determined that the decision of the Appellate Division is fully supported in every respect by the record and is legally unexceptionable. In reaching that conclusion we underscore the availability of the telephonic warrant and the option of vehicle impoundment as among the alternatives available to the ten police officers on the scene.

Nothing in this opinion should be viewed as a retrenchment from the well-established principles governing the automobile exception to the warrant requirement. The standards remain the same: probable cause and exigent circumstances, each of which to be determined on a case-by-case basis. Here, the unique facts, particularly the presence of ten officers, fully justified the Appellate Division's conclusion that exigency was absent. Different facts, such as a roadside stop effectuated by only one or two officers, would likely have changed the calculus. Police safety and the preservation of evidence remain the preeminent determinants of exigency.

State v. Johnson, 193 NJ 528, 556 (2008)

When the circumstances are sufficiently exigent that appearing before a judge to obtain a written warrant is either impossible or impracticable, but not so exigent that there is insufficient time to stabilize the situation and call for a warrant, police officers must obtain a telephonic warrant rather than conduct a warrantless search or seizure.

The State has argued that the exigent circumstances needed for a telephonic warrant are no different from the exigent circumstances justifying a bypass of the warrant requirement. We disagree, because if the State were correct the police would never have reason to apply for a telephonic warrant. Simply stated, for purposes of a telephonic warrant, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain a written warrant.). For purposes of a warrantless search, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain any form of warrant.

State v. Pena-Flores, 198 N.J. 6, 28-29 (2009)

[T]he warrantless search of an automobile in New Jersey is permissible where (1) the stop is unexpected; (2) the police have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) exigent circumstances exist under which it is impracticable to obtain a warrant. The notion of exigency encompasses far broader considerations than the mere mobility of the vehicle No one factor is dispositive; courts must consider the totality of the circumstances. How the facts of the case bear on the issues of officer safety and the preservation of evidence is the fundamental inquiry. There is no magic formula-it is merely the compendium of facts that make it impracticable to secure a warrant. In each case it is the circumstances facing the officers that tell the tale.

[W]e will amend *R.* 3:5-3(b) to clarify the parity between the various methods for obtaining a warrant and to underscore that an officer may resort to electronic or telephonic means without the need to prove exigency. (at 35)

d. Protective Searches

1. Michgan 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 *1035 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 NJ 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. Administrative Searches under the Closely Regulated Business Exception - (Commercial Trucking)

1. State v. Hewitt, 400 NJ Super. 376, 384-85 (App. Div. 2008)

Under the Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution, "[a] warrantless search [or seizure] is presumed invalid unless it falls within one of the recognized exceptions to the warrant requirement." One such exception is for an administrative search of a place of business operations of a highly or pervasively regulated industry. This exception applies only if three criteria are satisfied:
First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made....

Second, the warrantless inspections must be "necessary to further [the] regulatory scheme."

Finally, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers [in terms of time, place and scope].

Every federal circuit court of appeals that has considered the issue has concluded that commercial trucking is a highly regulated industry, and therefore, the government may establish a regulatory program for administrative searches of commercial trucks without a warrant.

2. State v. Pompa, 414 NJ Super. 219, 229 (App. Div. 2010)

The closely regulated business exception has "generally been applied to businesses with a 'long tradition of close government supervision.' ". It is based on the understanding that individuals engaged in pervasively regulated enterprises have a diminished expectation of privacy in their affairs. Warrantless inspections of closely regulated businesses, however, must be reasonable. In these instances, the State must demonstrate: (1) the existence of a regulatory scheme supported by a substantial government interest; (2) the warrantless inspection will further the regulatory scheme; and (3) the individual received notice of the inspection, and the search was limited in time, place, and scope. Ultimately, "[w]hether a search has been conducted in an unreasonable manner is a matter to be determined in the light of the circumstances of the particular case." In determining whether a business is closely regulated, the focus falls on "the pervasiveness and regularity of the ... regulation" and its effect on a business owner's expectation of privacy. We recently held that the commercial trucking industry is closely regulated [in Hewitt].

3. State v. White, 359 NJ Super. 16, 26-27 (Law Div. 2002) (Taxi)

A warrantless inspection, however, even in a pervasively regulated industry, is reasonable only when three criteria are met.. First, there must be a substantial government interest in the regulatory scheme under which the inspection is conducted. Second, the warrantless search must be necessary to further the regulatory scheme. Third, in terms of certainty and regularity of its application, the inspection must provide a constitutionally adequate substitute for a warrant. Specifically, to provide a constitutionally adequate substitute, the regulatory scheme must perform the two basic functions of a warrant by: (a) advising the property owner that a search is being made pursuant to law and properly defining the scope of that search and; (b) limiting the discretion of the inspecting officer. If all the three criteria are met, the administrative search is reasonable and discovered evidence admissible. Here, suspicionless warrantless seizures are not necessary to achieve taxicab operator safety. Second, the warrantless suspicionless searches are not necessary to further the regulatory scheme. Third, the inspection fails to be a constitutionally adequate substitute for a warrant as it (1) does not advise the property owner that a search can be made pursuant to law and properly defining the scope of that search and; (2) allows virtually unfettered discretion of the inspecting officer.

f. Consent Searches

1. 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)

g. Document Searches

1. State v. Boykins, 50 NJ 73,77 (1967)

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

2. State v. Lark, 319 NJ Super. 618 (App. Div. 1999) (affirmed 163 NJ 293 (2000))

In so arguing, the State relies on the *dictum* in *State v. Boykins, 50 N.J. 73, 232 A.2d 141 (1967)*, which says a "traffic violation ... will justify a search for things related to it," such as a search for registration if the operator is unable to produce proof of ownership. Based on this premise and the fact that defendant lied about his identity, the State maintains the officer was justified in believing that defendant was an unlicensed or suspended driver and that *Boykins* allowed him to conduct a limited search of the vehicle's passenger compartment for proof of defendant's identity.

We reject the State's arguments and reverse. Although there is a lessened expectation of privacy attendant to the interior of an automobile, and although the intrusion here seems minimal, in the absence of one of the recognized exceptions to the constitutional requirement of probable cause and a warrant, the evidence seized must be suppressed.

3. State v. Pena-Flores, 198 NJ 6, 31 (2009)

As a result of a lookup, [the officer] determined that the license plate and the bill of sale did not correspond to Fuller's vehicle. Accordingly, he was entitled, separate and apart from the automobile exception, to look into the areas in the vehicle in which evidence of ownership might be expected to be found. *State v. Boykins, 50 N.J. 73, 77, 232 A. 2d 141 (1967)* (citations omitted); *State v. Jones, 195 N.J.Super. 119, 122-23, 478 A.2d 424 (App.Div.1984)* ("[W]here there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may [conduct a] search [of] the car for evidence of ownership .... confined to the glove compartment or other area where a registration might normally be kept in a vehicle."

h. Searches for VIN Numbers

1. New York v. Class, 475 US 106 (1986)

In sum, because of the important role played by the VIN in the pervasive governmental regulation of the automobile and the efforts by the Federal Government to ensure that the VIN is placed in plain view, we hold that there was no reasonable expectation of privacy in the VIN. We think it makes no difference that the papers in respondent's car obscured the VIN from the plain view of the officer.

i. Seizure & Removal

1. By Statute:

NJSA 39:5-47

The commission may authorize the seizure of a motor vehicle operated over the highways of this state when it has reason to believe that the motor vehicle has been stolen or is otherwise being operated under suspicious circumstances and may retain it in the name of the commission until such time as the identity of ownership is established, whereupon it shall order the release of the motor vehicle to its owner.

NJSA 39:3-4

No person owning or having control over any unregistered vehicle shall permit the same to be parked or to stand on a public highway.
Any police officer is authorized to remove any unregistered vehicle from the public highway to a storage space or garage, and the expense involved in such removal and storing of the vehicle shall be borne by the owner of the vehicle, except that the expense shall be borne by the lessee of a leased vehicle.

NJSA 39:4-50.23(a)

Whenever a person has been arrested for a violation of R.S.39:4-50 or section 2 of P.L.1981, c. 512 (C.39:4-50.4a), the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

2. By Community Caretaking

South Dakota v. Opperman, 428 US 364, 368-369 (1976)

In the interests of public safety and as part of what the Court has called "community caretaking functions," automobiles are frequently taken into police custody. Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

3. Due to Exigent Circumstances

State v. Minitee, 415 NJ Super. 475 (App. Div. 2010)

We harmonize the seemingly inconsistent holdings in *Martin* and *Pena–Flores* by finding that the exigent circumstances that existed at the scene only permitted the police to seize the vehicle and transport it to a secure location. Thereafter, the police were constitutionally required to obtain a warrant before searching the vehicle. This approach distinguishes between, and guards against, unreasonable *searches* and unreasonable *seizures*, the two fundamental*489 protections embodied in Article I, Paragraph 7 of our State Constitution.

We consider the United States Supreme Court's decision in *Chambers v. Maroney, 399 U.S. 42, 51–52, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419, 428 (1970)*, permitting warrantless searches of vehicles impounded by the police, to constitute binding authority only under the Fourth Amendment of the United States Constitution. Under Article I, Paragraph 7 of our State's Constitution, as interpreted by the Court in *Pena–Flores,* however, the police must, where practicable, obtain a warrant before searching a vehicle that has been seized and impounded under the exigent circumstances exception to the warrant requirement.

4. Under the Automobile Exception

State v. Martin, 87 NJ 561 (1981)
Chambers v. Maroney, 399 US 42 (1970)

j. Inventory Searches

1. State v. Slockbower, 79 NJ 1, 9 (1979)

We hold that where police assumed custody of defendant's automobile for no legitimate state purpose other than safekeeping, and where defendant had arranged for alternative means, not shown to be unreasonable, for the safeguarding of his property, impoundment of defendant's automobile was unreasonable and, therefore, the concomitant inventory was an unreasonable search under the Fourth Amendment.

2. State v. Ercolano, 79 NJ 5, 34 (1979)

The taking of the car by the police and its search were unreasonable as against both the Fourth Amendment and N.J.Const. (1947), Art. I, par. 7. Leaving the properly parked and locked car on the street where defendant had left it, for a reasonable period of time, presented no more danger to the car and its contents than if defendant had been on a legitimate visit to a tenant in the apartment house. In the meantime, and until he could obtain release on bail, defendant should have been afforded an opportunity to telephone his brother or others to assume custody of the car. Absent such action by the police, their seizure of the car was illegal, and so must be the inseparable concomitant thereof, the later search of the vehicle.

3. **State v. Mangold, 82 N.J. 575, 577 (1980).**

This case concerns the propriety of police automobile inventory procedures initiated subsequent to lawful vehicle impoundment. The issue, left unresolved by the recent decisions of this Court in State v. Slockbower, 79 N.J. 1, 397 A.2d 1050 (1979), and State v. Ercolano, 79 N.J. 25, 397 A.2d 1062 (1979), is whether, in the absence of a search warrant or indicia of criminality, law enforcement officials must afford one an opportunity to remove possessions from the impounded vehicle before conducting an inventory of its contents. We conclude that the contraband discovered in the course of an inventory conducted without first permitting vehicle occupants to utilize available alternative means of safeguarding their property is inadmissible as evidence in a criminal prosecution. Such police conduct amounts to an unreasonable and unwarranted intrusion into the privacy interests of those occupants in contravention of the Fourth Amendment to the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution (1947).

4. State v. One Ford Thunderbird, 349 NJ Super. 352 (App. Div. 2002) (*Mangold* as applied to vehicle held for civil forfeiture).

k. Special Needs Exception

State v. Best, 201 NJ 100, 114 (2010) (On school grounds)
It is the school environment and the need for safety, order, and discipline that is the underpinning for the school official-who has reasonable grounds to believe that a student possesses contraband-to conduct a reasonable search for such evidence. To be sure, a student may hide contraband in his or her clothing, purse, book bag, locker, or automobile. Consequently, we conclude that the reasonableness standard, and not the traditional warrant and probable cause requirements, applies to the school authorities' search of a student's automobile on school property.

State v. Daniels, 382 NJ Super. 14 (App. Div. 2005) (Prisons)

Our holding is consistent with that of a growing number of courts that have upheld the validity of searches of prison visitors' automobiles, even in the absence of probable cause or individualized suspicion, finding that the State's legitimate interest in keeping contraband out of penal institutions outweighs the limited intrusion on the personal privacy interest of prison visitors.

I. Electronic Tracking

1. United States v. Jones, 132 S. Ct. 945 (2012)

The installation of a GPS tracking device on the suspect's vehicle and its use constituted a search within the meaning of the 4th Amendment.

Related Issue: The question raised in Katz v. United States, 389 US 347 (1967) as to whether the 4th Amendment protects people or places has now been clarified that it protects against both a reasonable expectation of privacy and against a trespass intended to obtain information.

Related Issue: Two prior "beeper" cases, United States v. Knotts, 460 US 276 (1983) and United States v. Karo, 468 US 705 (1984) can be distinguished in that in each case the beeper was inserted with the consent of the person in rightful possession of the container.

2. Cell Phone Tracking

State v. Earls, 420 NJ Super. 583 (App. Div. 2011)

[T]he use by the police of information obtained from T–Mobile concerning defendant's general location, derived from signals emitted by his cell phone, which together with visual surveillance resulted in discovery of his car in a motel parking lot, did not violate any legitimate expectation of privacy defendant may have had regarding the location of his car. As in *Knotts,* [w]hen [defendant] traveled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction ... and the fact of his final destination at the motel, and [n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them.