

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

SUPPRESSING MOTION TO SUPPRESS (POLICE TRAINING)

Featuring...

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Program description

This 1.5 credit CLE is geared to the men and women in blue to make them better prepared for, by the book, searches and seizures in New Jersey. You will learn all the new case law and the practical application of lawful personal, vehicle and residential searches.

I. Automobile Searches

- **Probable cause to believe contraband or criminal evidence in a vehicle and have exigent circumstances whereby getting a warrant is impractical police can search**
- **App. Div. said that arrest for DWI gives automatic probable cause to believe that evidence of DWI is in the vehicle, i.e. bottles**
- **Objective reasonableness –does not matter what officer thought – from objective standpoint the search must be appropriate**
- **Totality of circumstances is important and must be included in the police report so that the judge can gauge reasonableness**
- **Reasonableness is dependent on all facts presented to the officer – not each fact in isolation**
- **Exigency = time of day, location, number of people in car relative to number of officers, lighting, who are people (hostile or cooperative), type of crime investigating, etc.**
- **Judges are not supposed to look at one single factor in isolation**
- **The more detail in a report the more likely that your decisions are going to be considered reasonable**
- **Under federal law to search a vehicle all the police need is probable cause – scope of search is related to location where you have probable cause**
- **US Supreme Court required that simple rules for searches is best so that police can make quick decisions**
- **No good faith exception recognized in New Jersey – therefore a stop based on a mistaken belief that a person violated a motor vehicle statute prevents the proceeds of any subsequent search from being entered into evidence**
- **State v. Gamble, 218 NJ 412 (2014) – important case from safety standpoint, ability to search vehicles for weapons, “protective sweep” exception applied to circumstances outside of a search of a residence; ability to make cursory examination of interior of automobile to insure that there are not weapons present; “pat down” of vehicle for weapons; limited protective sweep of vehicles**
- **Maryland v. Buie, 196 US 325 (1990) – court created exception for protective sweep, POs into home to effect arrest warrant and person is under arrest, officers can enter house to do cursory search to insure that there is no one hiding who can pose a threat to officers during arrest – not general search for evidence;**

- evidence in plain view is another issue; protective sweep is a safety issue**
- **State v. Lane, 393 NJ Super 132 (App. Div. 2007) – protective sweep extended to a backyard**
 - **State v. Davila, 203 NJ 97 (2010) – court expanded protective sweep to situation in a home not for arrest but consent to enter the home**
 - **Firearms carry their own exigency**
 - **Totality of circumstances may result in a suspicion that a weapon may be inside the car**
 - **This type of search is limited to passenger compartment of the vehicle and areas where people in interior of vehicle have ready access – also unlocked containers in the vehicle; if something is locked not readily accessible therefore cannot search**
 - **Must put into report what reasonable and articulable suspicion may be – lighting conditions, back up availability, knowledge of individuals, whether individuals are cooperative, etc.**
 - **California v. Navarette, 134 SCt 1683 (2014) – same fact pattern as Golotta; police had more information than in Golotta; 911 caller was run off the road and provided full description of truck as well as license plate number; alleged specific and dangerous driving**
 - **similar case in NJ – State v. Golotta – involved 911 call to police regarding truck being driven all over and suspected DWI with description of truck, POs found truck matching description and pulled over vehicle, defendant argued that officers did not observe motor vehicle violations and unsure whether that vehicle was the one from the 911 call; court stated would have been better for officers to watch vehicle swerve to develop suspicion but allowing DWI to continue to drive would endanger safety.**
 - **911 tips are actually not anonymous because know the number from where the call was made, and criminal offense in NJ to make false 911 call – more guarantee of level of reliability with call**
 - **When make a stop based on 911 call, then tie together details from 911 call to the vehicle that was stopped**

II. Search warrants

- **Michigan v. Summers, 452 US 692 (1981)** – when serve SW, officers are privileged to detain anyone at the scene and can use restraints if appropriate; detain so individuals cannot interfere with search, so cannot hide or secret evidence, so cannot leave if probable cause develops as a result of search warrant; can detain for any period of time during the warrant; must act reasonably
- **US v. Bailey, 133 S.Ct. 1031 (2013)** – involved police getting ready to execute SW and see targets of investigation leave the scene in a car; pull over vehicle about a mile away from target residence and return them to residence of SW; evidence recovered from SW and individuals were arrested and charged; issue because individuals were not at the scene of the SW when detained; reasonable for police to detain during SW execution; once left premises there is no longer a justification for the detention of individuals, i.e. former occupant; must be limited to premises where SW is executed.
- **State v. Bivins, 435 NJS 519 (App. Div. 2014)** – NJ version of Bailey; NJSP case; see targets leave premises before SW execution; officer providing perimeter security finds individuals sitting in a vehicle a few houses down from location of search; detains and searches individuals and finds drugs; not at scene of execution of SW; since PO did not witness individuals leave residence and enter vehicle; SW did not identify defendant or the vehicle as persons or property to be searched or seized; beyond vicinity of premises to be searched.
- Once a person is off the property to be searched, questionable whether can stop them without other evidence of criminality
- **Fernandez v. California, 134 S.Ct. 1126 (2014)** – expanded Georgia v. Randolph – police in foot pursuit with defendant and disappears into apartment complex and police lose him; police hear commotion and knock on door; woman answers door and she is injured – DV – shall arrest situation; police request consent to enter and defendant denies; police say under arrest for DV assault; POs arrest and remove defendant to police station; POs then ask to search house for evidence of initial crime; consent is given and POs enter and find evidence; POs had probable cause to believe that there was a DV situation – not probable cause created by police; cannot arrest someone as a pretext to remove the non-consenting party from the home; person who shares a

residence with others assumes the risk that any other resident may admit visitors, including the police, in the absence of the other residence; a physically present inhabitant's express refusal of consent is dispositive – limited to situations where objecting occupant is *physically present*.

- **Related case Georgia v. Randolph, 547 US 103 (2006) – receive a call that people are loud and noisy; not DV; police to house and wife says that she wants POs to come in and take drugs out of bedroom; husband then says that he does not want POs to come into house; no other justification for POs to go into house; POs go in, get drugs, and arrest husband; warrantless search; consent of one over the other who is just as legally justified to occupy residence does not provide consent to conduct the search; evidence suppressed; if both are there then the one objecting is who you have to listen to; person objecting must be there in person and deny consent in real time**
- **Be sure to indicate in report that objector was removed from the premises either by a proper arrest or that the individual just left**
- **When requesting consent, be sure to advise individual that he/she has a right to refuse consent, have a consent to search form with you – circumstantial proof that understood right to refuse consent, right to limit scope of search, right to end search at any time**
- **If verbal consent be sure to include in detail the efforts taken to obtain consent and the proper warnings being given**
- **Consenting parties should be with your during course of the search so that there is no issue later on that person did not have the ability to exercise right to suspend search or limit scope of search**

III. Search for blood evidence

- **Missouri v. McNeely, 133 S.Ct. 1552 (2013)**
- **Whether or not need to get a search warrant or can rely on exigent circumstances to draw blood without a warrant**
- **If circumstances beyond control for PO or defendant to get to hospital – time sensitive**
- **Because of passage of time not practical to get SW**
- **In routine case, can never go wrong with getting SW**

- **Procedures for telephonic search warrants are established – judge will take testimony from arresting officer and Asst. Prosecutor**

IV. Exigent Circumstances

- **State v. Jones, 437 NJ Super 68 (App. Div. 2014) – Camden County; accident in winter in Cherry Hill township in rush hour; serious accident, 3 cars and building involved, police believed possible vehicular homicide, Jones pinned in her vehicle with fear that building was going to fall on her, jaws of life to extricate Jones, Jones unconscious, EMTs detected odor of alcohol on breath, Jones to hospital, POs only have accident but no further probable cause of DWI, POs to hospital and talking to Jones and develop enough probable cause for DWI arrest, ask nurse to draw blood and high alcohol level in blood shown in labs, NJ law at the time allowed for warrantless blood draw, App. Div. says regardless of McNeeley – police had so much exigency and delay in ability to get blood sample was not the fault of police – there was so much going on that search warrant would have further delayed getting blood, police acted reasonably**
- **Police reports should include details of exigency that made it impractical to get a search warrant based on fear that evidence would be lost based on passage of time**
- **0.015% per hour dissipation of alcohol in the body**
- **Police cannot create exigency, such as driving around to different police departments for Alcotest but unable to use machines – then decide to take defendant to hospital hours later – this is police created exigency – since police could have brought defendant right to hospital after 1st Alcotest problem.**
- **If exigency is of the police's own making, then is not sufficient to obviate need for search warrant**
- **Be mindful of time constraints dealing with blood alcohol**

V. Recovery of Cell Phones

- **Recovery of cell phones incident to arrest**
- **Riley v. CA, 134 S.Ct. 2473 (2014) – to what extent do you have an expectation of privacy relative to search incident to arrest; in the past police can seize and search anything recovered during search incident to arrest; Court held that phones were mini computers where people maintain personal information – phone is entitled to**

- be viewed differently than another piece of evidence that may be recovered during a search; people have high expectation of privacy in cell phones; cannot search cell phones without search warrant, consent, or exigent circumstances (danger that requires immediate action).
- **State v. Earls, 214 NJ 564 (2014) – cell phone tower pings; defendant is burglar; defendant storing proceeds of burglary in storage facility with girlfriend; goes to motel and rents a room to fill with proceeds; police find girlfriend and she gives him up; girlfriend gives police cell phone number; police call cell phone provider and asks to pin cell phone to locate it; cell phone provider gives location of cell phone; defendant is not there; provider again pings cell phone and still cannot locate; again get good location from provider; police have arrest warrant for defendant; police go to arrest and see proceeds in motel; girlfriend lets police into storage facility; defendant argues needed SW for cell phone pings – expectation of privacy; App. Div says no expectation of privacy because you are in public; Supreme Court says that people have expectation of privacy in cell phones under State Constitution because of the amount of personal information stored on a cell phone.**
 - **prior cell phone ping case – State v. Laboo, 396 NJS 97 (App. Div. 2007) – Newark case with team of armed robbers; steal cell phones of victims; police want to ping victim’s phones; police get CDW to track cell phone pings; so search issues relating to cell phone pings was not at issue**

VI. Plain View

- **3 elements: 1) lawfully in viewing area; 2) inadvertent discovery; 3) probable cause that item is contraband or evidence of criminality**
- **If make a motor vehicle stop with some justification, once stopped police are lawfully in viewing area**
- **Inadvertent discovery means that police were not looking for it**
- **Probable cause for item – must be immediately recognizable as contraband**
- **State v. Reininger, 430 NJS 517 (App. Div. 2013) - Police stopped vehicle and officer asked if defendant had any weapons on him;**

defendant denied but officer saw a box in the car used to transport long arm rifles; therefore officer had reasonable basis to believe that there was some sort of contraband or evidence of crime; court said that officer was in plain view; officer was conducting field inquiry; use of flashlight to illuminate interior of vehicle is not a search under 4th amendment.

VII. Flash Bang Devices

- **State v. Rockford, 213 NJ 424 (2013) – caselaw until this case was negative for using flash bangs – determined to be unreasonable; question as to reasonableness – warrant, exception to warrant requirement; police getting ready to search warrant; people in residence come out and police toss flash bang device in their direction and it goes off outside; court held that this was legitimate use of the flash bang device; police acted reasonably; court opted for case by case review based on totality of circumstances.**

VIII. Community Caretaking Exception

- **NJ Courts have allowed an expansion of the community caretaking exception outside motor vehicles and into residences**
- **All caselaw dealing with community caretaking exception federally always dealt with motor vehicles – NJ had in the past followed this same limitation (motor vehicles)**
- **3rd circuit continues to maintain community caretaking being limited to motor vehicles**
- **State v. Vargas, 213 NJ 301 (2013) – community caretaking when dealing with residence must be based on emergency where police are concerned for safety of humans inside residence; people must really be in danger in order to conduct a search; must tie reason to enter to an emergency – be sure to include in police report; here, landlord unable to contact tenant for 2 weeks – garbage not at curb, car had not moved, unpaid rent; police entered for welfare check and found drugs; court held that community caretaking is not basis of warrantless entry into home without reasonable emergency; search must have objectively reasonable basis to believe that emergency requires immediate assistance and reasonable nexus between emergency and area to be searched**

- **States can provide more constitutional protections than federal constitutional protections**

IX. Residential Entry based upon exigent circumstances

- **State v. Walker, 213 NJ 281 (2013) – if warrantless entry into a home, must have probable cause and exigent circumstances; exigency must be related to some type of criminal activity (4th degree or higher – not DP or PDP or traffic offense); police knock on door and defendant comes to door smoking mj; defendant tries to slam door on officers; police had probable cause to enter but for a DP offense –not a criminal offense; Court held that police acted reasonably with entry; police intrusion was limited; defendant came to door smoking therefore exposed himself to whoever was outside; police entry was justified for limited entry to arrest for purpose of mj possession.**
- **State v. Holland, 176 NJ 344 (2003) – police need warrant to enter home when merely have smell of marijuana as a basis; probable cause is only for DP possession.**

X. Description of individual in a search warrant

- **State v. Shaw, 213 NJ 398 (2012) - Police out serving a warrant; police knew where defendant lived and that he was black; police to area and see individual exit apartment complex who is black and police detain him for investigative purposes; individual has warrants so he is arrested and searched and drugs are found on his person; did police act reasonably? Detained defendant and warrant for his arrest and search incident to arrest; court held that police were not reasonable because police action was based on race and no additional information; only descriptive basis for the stop was the person's race.**

XI. Motor vehicle stops and consent searches

- **Reports are critically important – even the smallest detail may be important**
- **MV stop based on reasonable and articulable suspicion, i.e. witnesses MV violation – be sure to document appropriately**
- **Consent acceptable for search – in NJ only – must have reasonable and articulable suspicion that evidence in vehicle; suspicion must be separate and apart from reason for stop and**

must have it before asking for consent; must explain that people have right to refuse consent; consent to search form; read to them and sign – circumstantial evidence that freely and knowingly given consent; if don't sign or no form, then be sure to explain to them; explain right to refuse consent, right to limit consent, right to withdraw consent; after consent is given, can search as thoroughly as if had search warrant; search is only limited by scope of consent

- **Search of vehicle after arrest – be careful – argument will be made that consent is not freely and voluntarily given after person is arrested; also person is not able to object to area of search or withdraw consent if person is under arrest and in police car during search – mention in report**

XII. Use of dogs in searches

- **Use of a dog for search in NJ is function of reasonable and articulable suspicion – if ask for consent and denied, then you can say that you will get a dog and must wait until dog arrives – this is not a threat – this is a promise – once have reasonable and articulable suspicion then you have the right to get a dog**
- **Not coercive if person then changes mind and gives consent as long as had reasonable and articulable suspicion**
- **Problem for defendant is just that he/she will be delayed while getting dog for search**

XIII. Odor of marijuana in MV stops

- **Will provide probable cause that marijuana is in vehicle – will give basis to search under automobile exception**
- **No situation whereby you have burning marijuana in the vehicle – legally therefore sufficient probable cause for search under automobile exception**
- **Can also ask for consent or call for police dog for search**

Be guided in legal opinion by county prosecutor's office as chief law enforcement officer.