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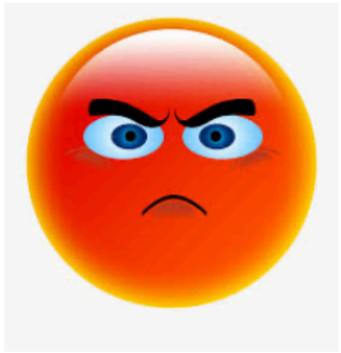
12 Angry Credits



N.J. Motor Vehicle Stops, Searches and Seizures

Lesson Plan

Instructor

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Introduction

There are three legal principles that are common to the search and seizure issues associated with motor vehicles in New Jersey.

1.) The first relates to reasonableness. It has often been said that the touchstone of the Fourth Amendment is reasonableness. Indeed, only one type of search or seizure has been outlawed under the constitution, one that is unreasonable. Reasonableness in this context means two things. First, if the interaction between the police and the suspect constitutes a search or seizure within the meaning of the Fourth Amendment, the police conduct must be reasonable from its inception. That is to say that the initial police action will have to be based upon either the authority of a judicial warrant or upon one of the recognized exceptions to the warrant requirement. In addition to the foregoing, the obligation of the police to act reasonably continues during the interaction with the suspect. Often, police conduct that begins reasonably will become unreasonable during the course of the investigation. The reasonableness of police conduct in the Fourth Amendment context is judged objectively based upon the totality of the circumstances. The personal beliefs or subjective impression of the police are largely irrelevant. Thus, regardless of the police conduct in a given case, when considering the facts, any number of exceptions to the warrant requirement may objectively satisfy the reasonableness requirement. Stated another way, once a police transaction has been determined to be a search or seizure (in the constitutional sense), the investigating officers have a duty to act reasonably. Since a motor vehicle stop constitutes a seizure of both the vehicle and the people inside it, the police must act reasonably with respect to the vehicle, the driver and the passengers.

2.) The second legal principle is based upon our country's tradition of federalism. Under our national system of governance, individual states are free to provide more protection to people within their borders under their own state constitutions than is otherwise provided by the United States Constitution. Thus, although the wording of the Fourth Amendment of the United States Constitution and N.J. Const. Art. I, para. 7 (1947) are virtually identical;

the level of protection afforded by each often differs dramatically. Thus, the protections guaranteed under the Fourth Amendment should be viewed as the minimum protections to which people in the United States are entitled. As will be seen, in the motor vehicle context, people in New Jersey are frequently afforded enhanced protections under the State Constitution of 1947.

3.) Finally, it must be remembered that the seizure of criminal evidence following a motor vehicle stop will almost invariably be made without a warrant. So, the discovery and seizure of criminal evidence or contraband by the police will be based upon the so-called "plain view" exception to the warrant requirement. Whether the officer was lawfully in the viewing area at the time he discovered the evidence is usually a function of the legality of the initial motor vehicle stop or the ensuing searching of the vehicle.

Part I – Traffic Stops

a.) Traffic Violations

1. **It has long been the law in the United States that in the absence of a 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, the stopping an automobile and detaining the driver in order to check his driver's license and the registration are unreasonable under the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648 (1979).**

2. **For traffic violations, the standard is one of probable cause. Whren v. U.S., 517 U.S. 806 (1996).**

3. **In either case, the stop of a motor vehicle constitutes a seizure within the meaning of the Fourth Amendment. The seizure extends to the driver, all passengers and the vehicle itself. Brendlin v. California, 551 U.S. 249 (2007). This rule of law triggers the requirement that the police act reasonably both in bringing about the stop and throughout its duration.**

4. **The law related to the level of suspicion required for a traffic stop is about to be explored by the Court. On November 4, 2019, the Justices heard oral argument in Kansas v. Glover. The legal issue is whether the fact that the owner of a vehicle is on the revoked list by itself provides the police with sufficient reasonable suspicion to stop the vehicle. The New Jersey view on this issue is unclear. The Supreme Court in State v. Donis, 157 N.J. 44, 58 (1998) stated in *dicta*, "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, an Appellate Division decision ruled that the police need corroborating information that the operator is revoked before being able to stop the vehicle. State v. Parks, 288 N.J. Super. 407 (App. Div. 1996).**

b.) Mistake of Fact – Mistake of Law

On occasion, the decision of a police office to effect a motor vehicle stop will be based upon either a mistake of fact or a mistake of law. New Jersey case law handles each of these circumstances differently.

1.) Mistake of fact - The touchstone of the Fourth Amendment is reasonableness. As a result, when police act in an objectively reasonable, although factually mistaken manner, their action can support a motor vehicle stop.

The issue of mistake of fact was fully explored in State v. Pitcher, 379 N.J. Super. 308, 878 A.2d 8 (App. Div. 2005). In *Pitcher*, the police made a motor vehicle stop based upon inaccurate information from a mobile data terminal (MDT) that the defendant was driving on a suspended license. The defendant was subsequently arrested for drunk driving.

Although the information the police relied upon to stop the defendant's vehicle was incorrect, the police acted reasonably in relying upon it. The data from MDT sources are generally trustworthy and of the type police rely upon countless times per day. The information is sufficient to provide an investigating police officer with a reasonable and articulable suspicion that the driver or the vehicle is unlawfully on the road.

2.) Mistake of Law - The United States Supreme Court explored this issue for the first and only time in its history in 2014 when it released its opinion in *Heien v. North Carolina*, 574 U.S. 54 (2014). The Justices began their reasoning by noting that the touchstone of the Fourth Amendment is reasonableness. However, acting in a reasonable manner is a far cry from acting perfectly, an impossible standard that the Constitution does not mandate. Thus, while acting in a reasonable manner, police are to be accorded a certain level of latitude to make reasonable mistakes of both law and fact. As noted by the Court in *Heien*:

But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

It is critical to note that, according to the Court, the Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable. The subjective understanding of the arresting officer is irrelevant to the legal analysis. Implied in this logic is the proposition that an unreasonable mistake of law will not justify a motor vehicle stop.

The New Jersey Supreme Court's view of mistake of law was detailed initially in State v. Scriven, 140 A.3d 535 (N.J. 2016). In *Scriven*, the Court specifically reserved on the issue as to whether a reasonable mistake of law should result in the suppression of evidence under Article I, paragraph VII of the State Constitution of 1947. However, the Justices did rule that an unreasonable mistake of law cannot justify a motor vehicle stop.

The *Scriven* case involved a motor vehicle stop based upon an officer's belief that a motorist was required to dim his high beam lights in a situation where there was no oncoming vehicle headed in the defendant's direction.[9] The Court found that the statute was simple on its face and that its requirements could not be reasonably misunderstood by a trained police officer. As a result, the officer's mistake of law in believing he had witnessed a traffic violation related to high beam lamps was not objectively reasonable and the evidence was suppressed.

Subsequently, in State v. Sutherland, 231 N.J. 429 (2018), the Justices provided police and prosecutors with a simple explanation of the state of the law on motor vehicle stops based upon mistake of law. First, the Court affirmed its ruling in *Scriven* that both the State and federal constitutions forbid a motor vehicle stop based upon

an unreasonable mistake of law. The Justices also reconfirmed that they were not ready to decide whether a reasonable mistake of law, as occurred in *Heien*, would be recognized under Article I, paragraph 7 of the New Jersey Constitution. The Court also cautioned that it will be a long time before this precise issue is likely to come before the Court for resolution since cases involving a misinterpretation of an unclear, ambiguous statute are exceedingly rare.

c.) Community Caretaking

The community caretaking exception to the warrant requirement is founded upon the common-sense notion that the vast majority of police work does not involve traditional crime-fighting, but rather activities that are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. Traffic and parking enforcement, crowd control, community relations and searching for lost children are a few among hundreds of examples of these police actions.

The search of a motor vehicle under community-caretaking originated in the United States Supreme Court's decision in *Cady v. Dombrowski*, 413 U.S. 433 (1973). In *Cady*, Supreme Court upheld the search of the trunk of an impounded car that revealed evidence of a police officer's involvement in a murder. The search had not been conducted to investigate the murder, but to recover and secure the officer's service revolver after he was in an alcohol-related accident. The Court held that because of the potential risk to the public if an interloper removed the revolver from the trunk of the vehicle, the search was a reasonable exercise of the police community-caretaking function. Three years later, the Supreme Court once again cited the community caretaking exception to justify the routine inventory search of a motor vehicle that had been impounded due to illegal parking. [South Dakota v. Opperman, 428 U.S. 364 (1976)].

The early community caretaking exception cases in New Jersey did not involve vehicle searches, but rather motor vehicle stops in drunk-driving cases. [State v. Goetaski, 209 N.J. Super. 362 (App. Div. 1986)]. In Goetaski, and the motor vehicle stop cases that followed, the Appellate Division recognized that police may stop a motor vehicle based upon a good faith belief that something is wrong. For example, the driver may be lost or sick. The vehicle may need immediate repairs; the occupants of the vehicle may be casing the neighborhood for a burglary. The idea is that the stop is not justified by articulable suspicion or probable cause, but rather that something is unusual or wrong and the vehicle or its occupants need help.

d.) Road Blocks

Roadblocks established by law enforcement agencies for the limited purpose of interdicting drunk drivers (DWI) have been deemed to be reasonable under the New Jersey Constitution since 1985 [State v. Kirk, 202 N.J. Super. 28 (App. Div. 1985)]. Over the years, the case law has added and occasionally eliminated a variety of conditions that the police must satisfy both before and during the road block. For the most part, all of the DWI roadblocks that have been subject to review by New Jersey courts since 1985 have been found to be reasonable.

On a federal level, road blocks for DWI enforcement were also found to be reasonable in 1990. The Supreme Court has also ruled that a road block to gain information about a fatal traffic accident [Illinois v. Lidster, 540 U.S. 419 (2004)] and a check point on a major highway to detect illegal aliens [U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976)] were reasonable while a road block established for the sole purpose of drug interdiction was unreasonable [City of Indianapolis v. Edmond, 531 U.S. 32 (2000).]

Part II – Administrative Police Functions

a.) Warrant check of passengers

The leading case on this issue is State v. Sloane, 193 N.J. 423 (2008). An NCIC search of a passenger revealed two active warrants. A search of the passenger incident to his arrest on the warrants yielded CDS. The defendant moved to suppress the evidence.

In this case, the Court ruled that a lawful motor vehicle stop constitutes a seizure of all the people within the affected vehicle. As a result, the police are required to act reasonably. A warrant look-up through the State's NCIC on passengers is not a search within the meaning of the 4th Amendment. Passengers have no expectation of privacy in their NCIC records. Therefore, such a search is reasonable in that it does not implicate any 4th Amendment issue for the passenger, unless the warrant check unreasonably delays the stop.

b.) Orders to Exit the Vehicle

Orders to exit a vehicle are significant in that once the occupant leaves, the police have the ability to make a more detailed view of the interior of the vehicle and detect weapons, CDS and other contraband that are in plain view.

Under federal law, there is no distinction between a passenger the operator of a motor vehicle. Both the driver and operator may be ordered from the vehicle without any level of particularized suspicion at the discretion of the investigating police officer. [PA. v. Mimms, 434 U.S. 106 (1977) (drivers); Maryland v. Wilson, 519 U.S. 408 (1997 (passengers))]

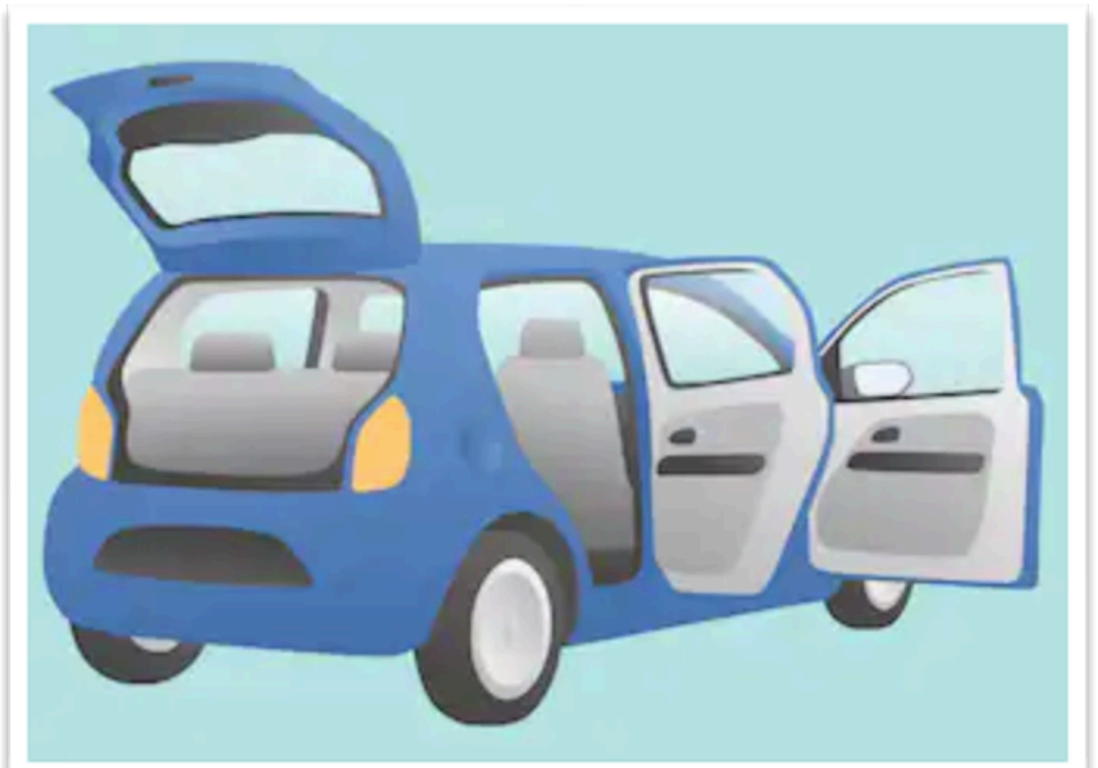
As set forth in State v. Smith, 134 N.J. 599 (1994), New Jersey follows federal law with respect to drivers. The police may order a driver to exit a vehicle without any level of suspicion. This decision is categorically left to the discretion of the police.

However, the *Smith* decision provides marginally more protection to passengers in motor vehicles than is otherwise available under the Fourth Amendment. For example, in the absence of a motor vehicle offense committed by the passenger, (typically a seatbelt violation) prior to ordering a passenger to exit a vehicle, the police must sense a heightened awareness of danger that would warrant a reasonable officer to secure the scene. This is a low standard of proof, actually less than a reasonable suspicion.

c.) Unannounced Door Openings

The Supreme Court set forth the rules for unannounced door openings, at least with regard to passengers in State v. Mai, 202 N.J. 12 (2010). In *Mai,* the Court borrowed from the law related to ordering passengers to exit a vehicle as explained in State v. Smith, 134 N.J 599 (1994) and ruled that 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.

This decision begs the question about the right of the police to perform an unannounced door opening for a driver. However, if the *Smith* case applies, no suspicion or other need is required for such a door opening by the police.



d. Police questioning during a motor vehicle stop

While there is a general right to remain silent during any encounter with the police [NJRE 503], there is no requirement that the police provide *Miranda* warnings before questioning the driver and occupants of a motor vehicle. [Berkemer v. McCarty, 468 U.S. 420 (1984)]. Moreover, a police officer may lawfully ask questions of the vehicle's 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. [State v. Hickman, 335 NJ Super. 623, 633 (App. Div. 2000)]

e.) Duration of motor vehicle stop

The question of the reasonableness of the length of a motor vehicle stop was discussed in State v. Dickey, 152 N.J. 468 (1998). The New Jersey Supreme Court adopted the reasonableness standards for a Terry stop for motor vehicle detentions. The standards are

1. **whether the officer's action was justified at its inception, and**
2. **Whether it was reasonably related in scope to the circumstances which justified the interference in the first place.**

There is no hard and fast rule governing the permissible length of a traffic stop. There are simply too many variables, including, on occasion, resistance, lying or lack of cooperation from the driver or a passenger. The key issue is one of reasonableness under the circumstances. A stop that goes on for too long becomes a de facto arrest that must be supported by probable cause.

Of course, the police have certain routine, administrative tasks they must accomplish during a traffic stop, and generally these should be completed in a manner that is minimally intrusive. These tasks may include checking driving credentials, reviewing criminal records for active arrest warrants for the driver and passengers, checking the operator's driving history, writing summonses and complaints and serving them upon the defendant.

During the stop, it is perfectly permissible for the police to interview the driver or passengers, even on topics unrelated to the initial purpose of the stop so long as the questioning does not unduly prolong the detention. [State v. Chapman, 332 N.J. Super. 452 (App. Div. 2000); State v. Hickman, 335 N.J. Super. 623 (App. Div. 2000).]

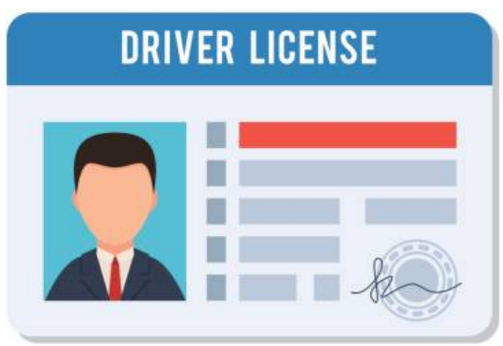
Part III – Vehicle Searches

a.) Search for Driving Credentials

The most recent statement of the law on this issue came from the Supreme Court in State v. Terry, 232 N.J. 218 (2018). In Terry, the Court held that a corollary to the automobile exception--one recognized in New Jersey and many other states--is the authority of a police officer to conduct a pinpointed search for proof of ownership when a motorist is unable or unwilling to produce his registration or insurance information. [State v. Keaton, 222 N.J. 438,442-43 (2015)].This limited registration search exception is partly rooted in the common-sense notion that the inability or unwillingness of a driver to produce a vehicle's registration may raise a reasonable suspicion that the vehicle was stolen.

Thus, under our state law, police officers have the authority to verify the ownership of any lawfully stopped vehicle, N.J.S.A. 39:3-29 and the authority to impound a vehicle when proof of ownership cannot be provided. The authority to conduct a warrantless registration search is premised on a driver's lesser expectation of privacy in his vehicle and on the need to ensure highway and public safety. A motorist must be given a meaningful opportunity to produce ownership credentials, but if he is either unable or unwilling to do so, an officer may conduct a brief and targeted search of the area where the registration might normally be kept in the vehicle.

We further note that if a driver or passenger explains to an officer that he has lost or forgotten his registration and the officer can readily determine that either is the lawful possessor, then a warrantless search for proof of ownership is not justified. Modern technology may increasingly allow police officers to make such timely determinations.



b.) The Automobile Exception

The automobile exception to the warrant requirement was first announced by the United States Supreme Court in the 1925 decision of Carroll v. United States, 267 U.S. 132 (1925). The Court noted that the inherent mobility of a motor vehicle made it impractical for the police to secure a convention search warrant following a motor vehicle stop. Accordingly, the Justices held that the development of probable cause to believe that contraband or criminal evidence could be found within the detained motor vehicle would justify a search under the Fourth Amendment. Over the ensuing years, two other justifications for this type of search were advanced, including the reduced expectation of privacy that people have when inside automobiles based upon the highly regulated nature of driving and that an immediate search is less intrusive to a motorist than a vehicle impoundment and subsequent search.

In 1996, the Supreme Court decided to simplify the automobile exception and eliminated all of the extraneous justifications for its use. Thus, in Pennsylvania v. LaBron, 518 U.S. 938 (1996), the Court announced that the automobile exception to the warrant requirement is predicated upon a finding of probable cause by the investigating police officer and nothing more. No separate finding of exigency is necessary to support a search under this exception.

The current version of the automobile exception in New Jersey was established by the Supreme Court in State v. Witt, 223 N.J. 409 (2015). In *Witt*, the Justices decided to adopt the simple probable cause requirement. Unlike federal law, this test requires that the probable cause be unforeseen and develop spontaneously. These extra elements are intended to prevent the police from developing probable cause before the motor vehicle stop occurs when there would be time to secure a search warrant.

In *Witt*, the Court also banned the towing of stopped vehicles for purposes of conducting a remote search and required that police searches under the automobile exception occur at the roadside. The scope of the roadside search is a product of where the probable cause leads the officers to search.

Finally, it well established that probable cause to conduct a motor vehicle search can be predicated upon the odor of marijuana [State v. Myers, 442 N.J.Super. 287 (App. Div. 2015)], a drunk-driving arrest [State v. Irelan, 375 N.J.Super. 100 (App. Div. 2005)] and contraband detected in plain view by the officer.

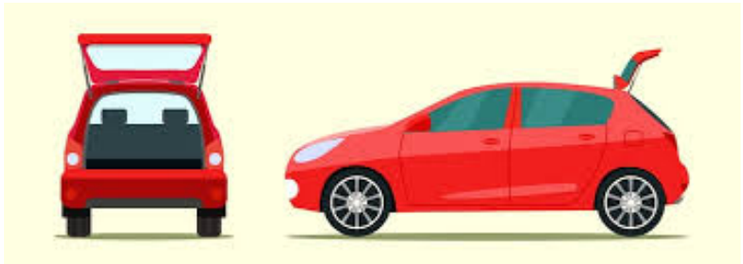
c.) Consent Searches

The law in New Jersey related to consensual searches has long provided more protection to people under the state constitution than is otherwise available under the Fourth Amendment. Starting in 1975, the New Jersey Supreme Court required that the State prove the voluntary component of consent by proving that the defendant was aware of his right to decline to give consent. [State v. Johnson, 68 N.J. 349 (1975).] Moreover, the Court also decreed that the burden of proof in all such cases would be by clear and convincing evidence.

As a result of the racial profiling controversy that plagued the New Jersey State Police during the last few years of the 20th century, the Supreme Court provided even greater protection to people riding in cars by conditioning a law enforcement request for consent to conduct a search on a reasonable suspicion that criminal evidence might be located within the vehicle. [State v. Carty, 170 N.J. 632 (2002).] This same law enforcement restriction applies to disabled vehicles as well. [State v. Elders, 192 N.J. 224 (2007).].

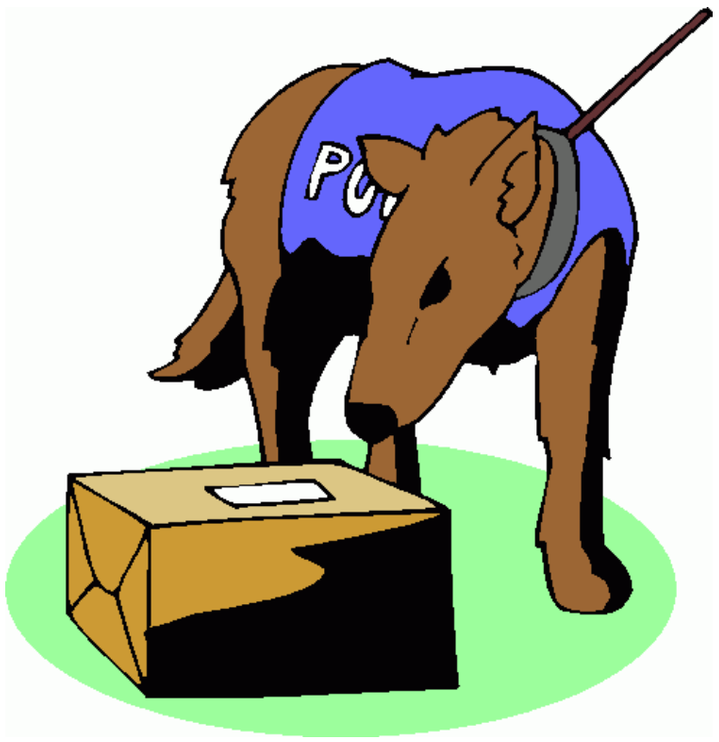
There are certain important characteristics of a consent search. These include the following:

1. **Consent may withdrawn at any time by the person who had apparent authority to grant it;**
2. **The search may be limited as to both time and location;**
3. **The consent must be complete free and voluntary and not the product of threats, duress or coercion;**
4. **Once the police have received consent, they may search as thoroughly as if they had a search warrant within the parameters of the consent.**



d.) Canine Searches

New Jersey has adopted the federal standard when it comes to sniff searches by canines. An alert by a trained police dog will provide the police will with probable cause to believe that some type of contraband is hidden in the vehicle where the dog has searched. Due to the minimally intrusive nature of the sniffing, a dog search does not constitute a search within the meaning of the 4th Amendment. As a result, the police need have no articulable suspicion in order to conduct a dog sniff search. In the context of a motor vehicle stop, an officer may not conduct a canine sniff in a manner that prolongs a traffic stop beyond the time required to complete the stop's mission, unless he possesses reasonable and articulable suspicion to do so. State v. Dunbar, 229 N.J. 521, 540 (2017). By way of example, see State v. Nelson, 237 N.J. 540 (2019) where the police had ample reasonable suspicion to prolong the motor vehicle stop in order to secure the services of a dog to conduct a sniff search.



e.) Searches for Weapons

New Jersey law appears to support two distinct types of searches for weapons in motor vehicles. First, police may conduct a thorough, detailed search of the interior of a vehicle when they establish a reasonable suspicion to believe that firearms or other weapons may be hidden inside. New Jersey and federal law on this topic are co-extensive and are based upon recognition of the dangers police face when conducting a motor vehicle stop. [State v. Lund, 119 N.J. 35 (1990)] Typically, the scope of this search is limited to the vehicle's interior and unlocked containers therein that could conceal a weapon. The parameters of this search are similar to a frisk of a person who has been detained by the police for investigative purposes. When the police develop reasonable suspicion that the detained person may be armed, the police can conduct a limited search of the person's external clothing in an effort to recover weapons.

The objective reasonableness of this search is based upon the totality of the circumstances. Among the common factors the courts will consider are:

- **Time of day;**
- **Availability of back-up;**
- **Number of police officers vs. number of vehicle occupants;**
- **Initial purpose of the motor vehicle stop;**
- **Attitude and behavior of the occupants;**
- **Reputation for crime in the area where the stop occurred;**

Each factor should be considered in conjunction with all the others when gauging the objective reasonableness of the police officer's decision to search for weapons within the vehicle.

By contrast, the New Jersey Supreme Court has recently announced a new rule of law that allows police to conduct a limited, visual sweep of the interior of a motor vehicle for weapons. The sweep is predicated upon the same level of reasonable suspicion that will justify a thorough safety search for weapons. Yet, a protective sweep is limited in that it's intended by the Court to be cursory and limited in scope to the location where the danger may be concealed. Unlike the safety search for weapons, the protective sweep of a motor vehicle is only a visual inspection of the vehicle's passenger compartment. [State v. Gamble, 218 N.J. 412 (2014)].

f.) Plain view recovery of evidence

The test for the plain view exception to the warrant requirement has been the subject of a recent revision by the New Jersey Supreme Court. Under the new law, as explained in State v. Gonzales, 227 N.J. 77 (2016), this exception to the warrant requirement has two elements:

1. **The officer must lawfully be in the viewing area; and**
2. **The officer must have probable cause to associate the item viewed with a violation of the law (or stated differently, "it must be immediately apparent that the seized item is evidence of a crime.")**

In the context of a motor vehicle search, being in the viewing area lawfully relates to the legality of the motor vehicle stop or the lawfulness of the search of the vehicle. Each of these must be reasonable if the plain view recovery of evidence or contraband came about as a result of a seizure.

The former element requiring that the discovery of the evidence be inadvertent has been discarded because it depended upon the subjective opinions of the officer. Reasonableness in the 4th Amendment context is objectively based and not dependent upon the officer's subjective thoughts or opinions.

h.) Exigent Circumstances

A search undertaken by police or fire officials as a result of an emergency may be undertaken based upon the exigent circumstances exception to the warrant requirement. Fires, potential explosions, injured people and the immediate need to extract objects from a vehicle all fit within this exception. Criminal evidence or contraband recovered during such a search is generally admissible under the plain view doctrine.

i.) Search incident to arrest

The highly controversial search incident to arrest doctrine that formerly permitted the search of a vehicle following the arrest of a recent occupant no longer is valid law in the United States. [State v. Eckel, 185 NJ 523 (2006) and Arizona v. Gant, 556 US 332 (2009) overruling New York v. Belton, 453 U.S. 454 (1981)].

Part IV – Vehicle Impoundments

a. Impoundments

Impoundments – A number of statutes allow policed to seize and impound motor vehicles following a traffic stop. Among them are:

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 – A person owning or having control over any unregistered vehicle shall not 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 the 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) (John's Law) – 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.

NJSA 39:4-136 – No person shall park or leave standing a vehicle, whether attended or unattended, upon the roadway, outside of a business or residence district, when it is practicable to park or leave it standing off the roadway.

As a matter of common law, vehicles that constitute a hazard or constitute criminal evidence may also be impounded by the police. In addition, a vehicle that has been operated by an unlicensed driver must be towed away if it cannot be lawfully parked or turned over to a responsible third party. [State v. Slockbower, 79 N.J. 1 (1979)].

As a general rule, the driver and passengers in a motor vehicle have the right to remove their personal property from the vehicle prior to its impoundment by the police.

b.) Searches of Impounded Vehicles

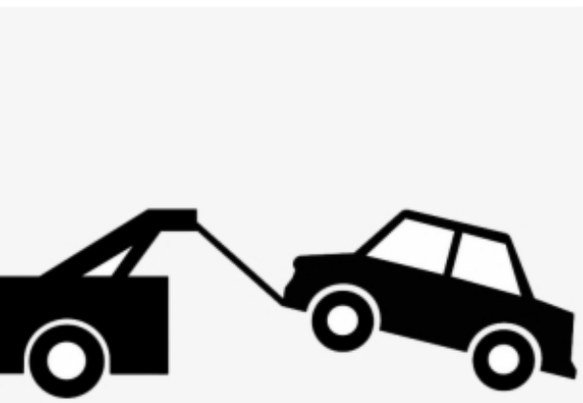
1.) Non-criminal - Outside of the criminal context, a vehicle that has been impounded by the police constitutes a bailment. Technically, the purpose of the impoundment is to hold the vehicle in safekeeping until it can be returned to its lawful possessor. Thus, as a bailee, it is perfectly reasonable and proper for the police to conduct an inventory of the vehicle's contents so that they may be accounted for and returned undamaged. This procedure will enable the police department to protect itself against subsequent civil claims of theft, sabotage, vandalism and the like. Finally, an inventory also provides the police with the opportunity to remove any hazardous materials from the vehicle that could pose a threat to people or things in the impound-storage area. Simply put, an inventory search is not a search for criminal evidence. Rather, it is a community caretaking function of the police. [South Dakota v. Opperman, 428 U.S. 364 (1976).]

In order to rebut the argument that the search was a subterfuge for a warrantless, investigative search for criminal evidence, the police should be able to prove several factors during the motion to suppress:

- **1. The initial stop of the vehicle was reasonable.**
- **2. The impoundment was necessary and made in accordance with New Jersey statutory or common law.**
- **3. The inventory was conducted under well-defined departmental procedures and guidelines. [State v. Mangold, 82 N.J. 575 (1980).]**
- **4. There was a discussion with the on-scene owner or other responsible person about the disposition of the vehicle's contents before the impoundment and whether the responsible person wished to waive the inventory search following impoundment. [State v. Mangold, 82 N.J. 575 (1980).]**

Having established these factors - and unless otherwise excludable, obvious criminal evidence is discovered inadvertently during the inventory search – evidence should be admissible under the plain view exception to the warrant requirement.

2.) Criminal - For impoundments that require a search for criminal evidence, the best practice for the police is to get a search warrant or a valid consent. On occasion, the exigent circumstances exception will also justify the search for criminal evidence of an impounded vehicle. [State v. Minitee, 210 N.J. 307 (2012) (fire arms).]



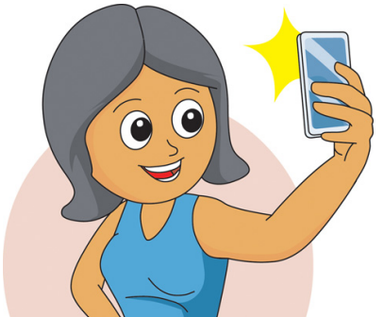
Part V – Electronic Tracking

a.) In general

Technology has long enabled law enforcement to track and record the movements of motor vehicles. Despite the value of this practice for law enforcement, in recent days it has also raised serious privacy concerns under the Fourth Amendment. These privacy concerns are a function of the unimaginable improvements in communications technology. For example, historically, the Supreme Court has maintained that a person has no expectation of privacy in what he voluntarily exposes to the public. As a result, the visual tracking of an individual's motor vehicle, without electronic technological aids, does not constitute a search or seizure within the meaning of the Fourth Amendment.

Secondly, under so-called "third party" doctrine, a person does not maintain an expectation of privacy under the Fourth Amendment in documents or materials he voluntarily turns over to a third party. Thus, federal law enforcement can gain access to telephone billing records, bank records and the like through the means of a simple subpoena.

As technology has improved, law enforcement efforts to track people and contraband have extended far beyond visual surveillance to include "beepers," global positioning satellites (GPS), toll payment devices and cell phones. These forms of technology allow law enforcement to track the movements of individuals with great precision over long distances and periods of time. Through this information, law enforcement may learn about all manner of personal habits of the targeted individual, including religious and political practices, intimate relationships and visits to health care professionals. This information is often utterly irrelevant to the underlying criminal investigation. It is also routine and highly personal information; it is the kind of information for which society is prepared to recognize a legitimate expectation of privacy.



The Supreme Court has recognized the threat to privacy that is implicated with modern electronic tracking and surveillance. It is now clear that the use by the police of a GPS device secreted on a motor vehicle by law enforcement constitutes a search within the meaning of the Fourth Amendment. [U.S. v. Jones, 565 U.S. 400 (2012).]

As a result, the police have an obligation to act reasonably. A reasonable procedure by the police is to secure a search warrant authorizing the time, place and manner of the installation of the GPS. However, even with a grant of judicial authority, it is an open question as to how long a GPS device may reasonably remain on the vehicle.

The Supreme Court has also signaled a relaxation of the "third party" doctrine with regard to information that can be gathered from service providers on cell site location information. Simply stated, the Court now recognizes a legitimate expectation of privacy in the cell site location information held by cell phone service providers.

The New Jersey Supreme Court has also recognized a privacy interest in cell phone records that pinpoint the phone's location and have required a search warrant for police to access such records. [State v. Earls, 214 N.J. 564 (2013)].

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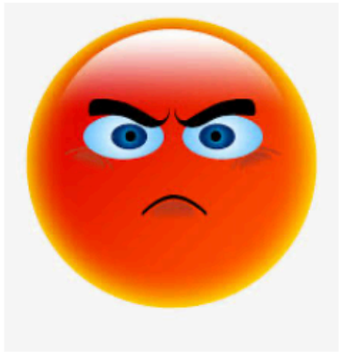

N.J. Motor Vehicle Stops, Searches and Seizures

Lesson Plan

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