**Garden State CLE Presents:**

# Criminal Law Review - 2025

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# Lesson Plan



# I. Arrest, Search and Seizure

**Motor Vehicle stops based upon tinted windows**
**State vs. Haskins, 477 N.J.Super 630(App.Div.2024)**

Beginning in 2002, a lawful motor vehicle stop based upon tinted windows was premised upon the extent of the tinting. Under Cohen, the State was required only to show, more generally, the officer reasonably believed a car's windows were so darkly tinted as to obstruct [the driver's] vision. We also held in that case N.J.S.A. 39:3-74 prohibits the use of tinted windows which fail to meet the applicable standard now set forth in N.J.A.C. 13:20-33.7. In contrast, under Smith, the Court determined the State must present evidence that the window tint actually inhibited officers ability to clearly see inside the vehicle. The Court also explicitly departed from Cohen to the extent that it ties violations of N.J.S.A. 39:3-74 to the standards set forth in N.J.A.C. 13:20-33.7.

**Search of Motor Vehicle Prior to a Mandatory Impoundment**
**State vs. Courtney, 478 N.J.Super 81(App.Div.2024)**

Under N.J.S.A. 39:4-50.22, police are required to impound any vehicle operated by an intoxicated person for a period of 12 hours. Logically, this impoundment period will invariably provide the police with sufficient time to obtain a search warrant for the vehicle based upon probable cause that it may contain evidence of intoxication by drugs or alcohol. (See State vs. Irelan, 375 N.J.Super 100(2005)). Moreover, once a vehicle has been removed from the scene of its stop, police may not conduct a search of its contents under the automobile exception to the warrant requirement. (See State vs. Witt, 223 N.J. 409, 448-49(2015)). These legal propositions would make it appear that the police will always have sufficient time to obtain a search warrant when a vehicle has been impounded and no search would be justified at the roadside based upon the automobile exception. However, in Courtney, the panel ruled that so long as police satisfy the foundational requirements of probable cause, spontaneity, and unforeseeability as required by Witt, the authority to conduct an automobile-exception search lapses only after the vehicle has been removed to a secure location, not in anticipation of such removal.

**Entry into Attached Garage Without a Search Warrant**
**State vs. Mellody, 479 N.J.Super 90, 318 A.3d 723(App.Div.2024)**

Police responded to a telephonic report of an intoxicated driver. Based upon the license plate information provided by the caller, the police went to the address of the registered owner of the vehicle. Upon arrival, the investigating police officer witnessed the vehicle pull into the attached garage to the residence. The officer entered the garage in an effort to investigate the report of intoxicated operation. During the course of his investigation inside the attached garage, the officer was able to accumulate substantial video and physical evidence of intoxication. The defendant subsequently moved before the municipal court to suppress this evidence based upon the theory that the officer's entry into the attached garage without a search warrant, consent or exigent circumstances was unreasonable under the state and federal constitutions. The prosecution argued that the community caretaking exception to the warrant requirement permitted the police to enter the garage. The motion was denied and following her conviction for intoxicated operation, the defendant appealed.

The Appellate Division ruled that the special protections accorded to a residence also applied to the defendant's garage. The attached garage was part of her home, or at the very least, part of the home's protected curtilage. For constitutional privacy analysis purposes, a garage is not just a place to shelter vehicles from the elements. Personal effects protected under the literal terms of the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution might as easily be stored in a garage as in a basement, an attic, or, for that matter, a bedroom walk-in closet. In this instance, the record showed defendant kept a refrigerator in her garage. Moreover, it made no difference that the garage door was open when the officer crossed the threshold.

A large open door does not invite police to enter a garage without a warrant or recognized exception to the warrant requirement any more than an open sliding-glass patio or lanai door invites police to enter a family room. While an open door may, depending on fact-sensitive circumstances, expose to plain view certain contents of a garage, even then, police may not enter the garage based solely on the plain view observation of contraband inside. The panel also ruled that, consistent with Supreme Court precedent, the community-caretaking doctrine is not a justification for the warrantless entry and search of a home in the absence of some form of an objectively reasonable emergency. Based upon the foregoing, the panel suppressed the evidence obtained by the police officer while in the garage and vacated the defendant's municipal court drunk-driving conviction.

# II. Discovery

**Limitations on Defendant's Discovery Obligations as it Relates to Work Product**
**State vs. Knight, 256 N.J. 404, 309 A.3d 639(2024)**
**State vs. Ross, 256 N.J. 390(2024)**

In general - Defense discovery obligations are set forth under Rule 3:13-3(b)(2). Although the defendant has mutual discovery obligations once he has made a demand for discovery from the prosecution, he is under no obligation to reveal inculpatory evidence that may exist within his attorney's work product. Moreover, although a defendant must provide the names and classification of witnesses, there is no necessity to provide statements of anticipated witness testimony unless such evidence has been reduced to writing.[1]

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[1] State vs. Tier, 228 N.J. 555, 159 A.3d 388(2017).

Work product and reciprocal discovery - The thrust behind the reciprocal discovery obligation under Rule 3:13-3 is that the State is entitled to know in advance what evidence a defendant intends to use at trial so that it may have a fair opportunity to investigate the veracity of such proof.[2] Documents, exhibits and other such potential evidence that was created by defense counsel in preparation for trial is generally not subject to exchange with the prosecutor as reciprocal discovery.[3] By contrast, when the discovery item is physical evidence of a crime and not the product of defense counsel's investigation, it is not subject to work product protections and must be provided to the prosecution as reciprocal discovery. Two examples from the Supreme Court last year are State vs. Knight, 256 N.J. 404, 309 A.3d 639(2024) (affidavit that had not been prepared by defense counsel was evidence of a crime) and State vs. Ross, 256 N.J. 390(2024) (Bullet removed from defendant's body in possession of defense counsel was deemed to be physical evidence and not work product).

Instructor's comment - Higgs motions – State vs. Higgs, 253 N.J. 333(2023) – Police internal affairs reports – In order to ensure that defendants in criminal trials be provided with the discovery necessary to adequately prepare for trial, defendants must be allowed, under certain circumstances, to access documents in law enforcement's internal affairs files. This is consistent with the State's obligation to produce exculpatory and impeachment evidence. That does not, however, mean that defendants have unbridled access to internal affairs records. Rather, a defendant who seeks discovery of information from an internal affairs file must first file a so-called Higgs motion with the trial court requesting an in-camera review of that file. The Higgs motion should identify the specific category of information the defendant seeks and the relevance of that information to his case. A general allegation that the defendant is in search of information relevant to a law enforcement

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[2] State vs. Williams, 80 N.J. 472, 478, 404 A.2d 34(1979).

[3] State vs. Mingo, 77 N.J. 576, 392 A.2d 590(1978).

officer's credibility for impeachment purposes is insufficient to obtain review of the file. The procedure should not be a fishing expedition into the disciplinary records of law enforcement. Instead, the defendant must assert that the internal affairs information, if present, is relevant, consequential and material to the case, rendering it necessary for the trial judge's in camera review of the file.

**Defense entitlement to reports of drug canine's field and health reports as an element of criminal discovery**

**State vs. Morgan, 479 N.J.Super 420, 322 A.3d 135(App.Div.2024).**

In conjunction with preparation for a trial involving weapons and drugs, the defendant moved before the court for a discovery order requiring the State to provide data about the drug canine used in the case. Specifically, the defendant sought the dog's training information and field reports associated with the canine team that conducted the search of the defendant's vehicle. The State produced the training information, but it objected to producing the field reports on relevance grounds. The defendant maintained that the field reports were essential as foundational support for the opinion of the expert he planned to use at trial. While declining to create a bright line rules entitling defendants in a canine case to such data, the appellate panel held that on remand, the trial court was to conduct a hearing. The panel determined that if the proposed expert's opinion regarding the canine team's reliability is admissible, then it could then order the State to produce all of subject canine's disputed field and health records pursuant to Rule 3:13-3(b).

# III. Trial Practice

## Remote expert witness testimony at trial
## State vs. Lansing, 479 N.J.Super 565(App.Div.2024)

The evolution of communications technology has made remote video communications using computer-based platforms a common occurrence in both the public and private sectors. Currently, the use of this technology is both widespread and routine in the municipal and Superior Courts of New Jersey. The authorization for this procedure is set forth in Rule 1:2-1(b) which provides:

> Upon application in advance of appearance, unless otherwise provided by statute, the court may permit testimony in open court by contemporaneous transmission from a different location for good cause and with appropriate safeguards.

Thus, the procedure requires an advance application to the court and an exercise of discretion for the trial judge. Prior to the promulgating of the Rule, the case law provided a measure of guidance to trial judges on how to exercise their discretion in determining whether to allow remote testimony.[4] These factors include:

- The witness' importance to the proceeding;

- The severity of the factual dispute to which the witness will testify;

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[4] Pathri vs. Kakarlamath, 462 N.J.Super 208, 216, 225 A.3d 559(App.Div.2020)

• Whether the fact-finder is a judge or a jury;

• The cost of requiring the witness' physical appearance in court versus the cost of transmitting the witness' testimony in some other form;

• The delay caused by insisting on the witness' physical appearance in court versus the speed and convenience of allowing the transmission in some other manner;

• Whether the witness' inability to be present in court at the time of trial was foreseeable or preventable; and

• The witness' difficulty in appearing in person.

The practical aspects of weighing and evaluating these factors was explored in detail by the Appellate Division in Lansing where the trial court rejected the defendant's request to have his expert witness testify remotely at trial. The Appellate Division found that the trial court's analysis was consistent with both the Court Rule and factors set forth in the case law and affirmed the decision to disallow remote testimony of the expert at trial.

Instructor's comment – The Appellate Division has recently crafted an exception that will allow a defendant who has been removed under law from the United States to stand trial by way of remote video. See State vs. Reyes-Rodriguez, __ N.J.Super __(App.Div.2025) 2025 WL 84873.

**Slow motion replay of video surveillance at trial**

**State vs. Knight, ___ N.J. ___(2024) 2024 WL 5148457, affirming State vs. Knight, State vs. Knight, 477 N.J.Super 400, 405(App. Div.2024).**

Slow motion surveillance video replay –In a comprehensive opinion that was affirmed by the Supreme Court, the Appellate Division ruled that, subject to offsetting concerns of undue prejudice under N.J.R.E. 403, surveillance video footage may be presented to jurors in slow motion or at other varying speeds, or with intermittent pauses, if the trial court in its discretion reasonably finds those modes of presentation would assist the jurors' understanding of the pertinent events and help them resolve disputed factual issues. Moreover, surveillance video may be viewed during deliberations in such modes one or more times, provided that the playbacks occur in open court under the judge's supervision and in the presence of counsel.

Instructor's comment: Body-worn video from police officers: Rebuttable presumptions - In general, New Jersey police are required to wear body cameras and use them to record interactions with members of the public. Evidence from this so-called BWC (body-worn camera) footage can be enormously valuable to both the prosecution and the defense. For that reason, when BWC footage is unavailable or missing without justification or excuse, New Jersey statutory law under N.J.S.A. 40A: 14-118.5(q) establishes a rebuttable presumption (i.e. more properly, a permissive inference) that missing or destroyed police body-worn camera footage would have been exculpatory.[5]

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[5]See discussion in State vs. Jones, 475 N.J.Super 520(App.Div.2023).

**Conflicts of interest at trial**
**State vs. Kearney, 479 N.J.Super 539(App.Div.2024); State vs. Smith, 478 N.J.Super 52(App.Div.2024).**

In general - Our state's trial conflict rulings have exhibited a much lower tolerance for conflict-ridden representation under the New Jersey Constitution than federal courts have under the United States Constitution. One such ground deals with conflicts of interest at trial that had the capacity to limit or otherwise affect the effectiveness of defense counsel. In point of fact, New Jersey recognizes a per se rule of law related to conflicts between a defense attorney and his client. State vs. Cottle, 194 N.J. 449, 946 A.2d 550(2008) (Defense attorney and his client both under indictment by the same county prosecutor); State vs. Bellucci, 81 N.J. 531, 410 A.2d 666(1980) (Absent a valid waiver, simultaneous dual representations of codefendants by a private attorney, or any lawyer associated with that attorney, will give rise to a per se conflict and presumed prejudice.) However, payment of legal fees to the defense attorney by a witness at trial does not necessarily create a conflict sufficient to warrant the granting of post-conviction relief.

In terms of recent case law, see State vs. Kearney, 479 N.J.Super 539, 323 A.3d 569(App.Div.2024) (payment of defendant's legal fees by defendant's girlfriend, who was victim's cousin and a witness for State at trial, did not create per se conflict of interest on part of defense counsel, as would result in presumption of prejudice in analysis of ineffective assistance claim); and State vs. Smith, 478 N.J.Super 52, 310 A.3d 705(App.Div.2024), holding that a county prosecutor or an assistant who once represented the defendant does not require the subsequent disqualification of the entire office.

**Need for trial judges to conduct Miranda hearings during trial**
**State vs. McGuigan, 478 N.J.Super 284(App.Div.2024)**

The defendant was the subject of a police investigation related to a strict liability, drug induced death. As part of the process, the police conducted a videotaped interview of the defendant at police headquarters. Prior to administering Miranda warnings, the police elicited several incriminating admissions from the defendant. Following the subsequent administration of Miranda warnings, the police conducted a comprehensive interrogation of the defendant without informing her that the person who was the focus of their questioning had died. In fact, the police detective purposefully avoided that topic by making repeated references to the decedent as if she were still alive. The video of the defendant's interview by the police was shown to the jury at her criminal trial on two occasions. Significantly, neither the prosecution nor the defense sought to have an N.J.R.E. 104(c) Miranda hearing to gauge the voluntariness of the defendant's recorded statements prior to having them considered by the jury. However, this issue was raised on appeal and the Appellate Division ruled that the failure of the trial court to require a Miranda hearing during the course of the trial as to the voluntariness of the defendant's confession constituted plain error.

Instructor's Commentary – Use of trickery by the police - In general, the use of psychological coercion, including trickery and deceit by police has received judicial sanction. Without defining the limits of such conduct, the Supreme Court has upheld certain forms of trickery.[6] New Jersey courts

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[6]Frazier vs. Cupp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684(1969) (holding confession was voluntary where police lied to defendant that his co-defendant had implicated him in the crime); see also Miller vs. Fenton, 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405(1985*)* (upholding confession obtained after an hour long interrogation where the police lied about evidence they had against defendant, expressed sympathy toward defendant by indicating suspect was not a criminal and should receive psychiatric help, and where the suspect collapsed in a state of shock immediately after confessing).

also have permitted the use of trickery in interrogations.[7] However, there are certain limitations to police interrogation techniques. Since 2003, New Jersey courts have enforced a bright-line rule that precludes the use of police-fabricated physical evidence that later finds its way into the trial.[8] The use of police-fabricated evidence to induce a confession that is then used at trial to support the voluntariness of a confession is *per se* a violation of due process.[9] The McGuigan holding presents an analogous question; did the failure of the police to inform the defendant that the victim had died constitute a form of trickery that vitiated the voluntariness of her confession. That matter was the subject of the remand to the trial court for the purpose of conducting the N.J.R.E. 104(c) Miranda hearing where the court will determine beyond a reasonable doubt the voluntariness under the totality of the circumstances test.[10]

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[7] State vs. Cooper, 151 N.J. 326, 355–56, 700 A.2d 306(1997).

[8] State vs. Patton, 362 N.J.Super 16, 48, 826 A.2d 783(App.Div.2003).

[9] State vs. Patton, 362 N.J.Super 16, 49, 826 A.2d 783 (App.Div.2003).

[10] State vs. Miller, 76 N.J. 392, 404-05, 388 A.2d 218(1978).

**Proving insanity at trial**

**State vs. Arrington, ___ N.J.Super ___(App.Div.2024) 2024 WL 5180783**

In adopting the present Criminal Code in 1978, our Legislature delineated the insanity defense to criminal charges using the following words:

> A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. [N.J.S.A. 2C:4-1].

As expressed in these terms, the insanity statute codifies the common-law M'Naghten test dating back to nineteenth-century English law. The Legislature has not revised this definition of insanity since Title 2C's enactment nearly fifty years ago.

The primary legal issue in this appeal is whether criminal defendants in New Jersey invoking N.J.S.A. 2C:4-1 are permitted to testify at trial about their own allegedly insane mental state without accompanying expert testimony from a qualified mental health professional. We concur with the trial court that such lay testimony by a defendant, un-tethered to admissible expert opinion substantiating the defendant's purported disease of the mind, is inadmissible under our Rules of Evidence and insufficient to advance an insanity defense under N.J.S.A. 2C:4-1. This conclusion is supported by the history and text of the statute. It is also consistent with the case law of most of the states that have addressed the issue under the M'Naghten test.

Although policy arguments can be made and have been made to revise the criteria of N.J.S.A. 2C: 4-1 and replace the traditional M'Naghten test with modern concepts of mental disorders, the Legislature has not done so. Nor has our Supreme Court invalidated the statute as unconstitutional or construed the law to allow lay testimony to suffice to establish a defendant's insanity. Consequently, we hold that defendants must have expert opinion testimony to meet their burden of proving the defense of insanity. We affirm the trial court's ruling that disallowed defendant in this case from testifying about his alleged insane state of mind without calling such an expert.

Instructor's comment – In the DWI context, see State v. Inglis, 304 N.J.Super 207(LawDiv.1997) (Neither the common law insanity defense nor the Code insanity defense is permitted in a DWI defense.)

**Proof of prior offenses for purposes of sentence enhancement**
**United States vs. Erlinger, 602 U.S. 821 (2024); State vs. Carlton, ___ N.J.Super ___(App.Div.2024) 2024 WL 5240952**

Although certain serious crimes require extended terms for repeat offenders, the existence of the triggering prior convictions that render a defendant eligible for an extended term is a jury question that must be proved beyond a reasonable doubt. According to the United States Supreme Court, a jury, not the sentencing judge, must decide the existence of the facts necessary to establish the grounds for a sentence enhancement based on prior convictions for offenses committed on separate occasions. This decision abrogates the New Jersey Supreme Court's decision in State vs. Pierce, 188 N.J. 155, 902 A.2d 1195(2006). See comprehensive analysis as this new rule of New Jersey law relates to eligibility for an extended term in State vs. Carlton, ___ N.J.Super ___, ___ A.3d ___(App.Div.2024) 2024 WL 5166607

Instructor's comment: The proof beyond a reasonable doubt related enhanced sentences triggered by prior offenses related to police misconduct was cited by both the Appellate Division and the Supreme Court in the drunk-driving context. See State vs. Zingis, 471 N.J.Super 590, 603(App.Div. 2022) (The State did not produce proof beyond a reasonable doubt that his 2012 DWI conviction was not tainted by police misconduct in calibrating the Alcotest 7110.); State vs. Zingis, 259, N.J. 1 (2024) (The prosecutor must now provide the prior disposition, along with the complete row of data from Exhibit S-152, and the Dennis Calibration Repository Summary in discovery, which together will be deemed proof beyond a reasonable doubt of whether a defendant's prior DWI conviction is a Dennis-affected matter.)

**Exposing witnesses to photos of the defendant prior to trial**
**State vs. Washington, 256 N.J. 136, 161-162(2024).**

Witnesses who have already made an identification should not be shown any photos of the defendant during trial preparation. In most cases, witnesses who meet with prosecutors and investigators to prepare for trial have already identified or attempted to identify a suspect. Many have previously viewed a photo array, a live lineup, or a show-up. Any witness who has made a prior identification should not be shown new or different photos of the defendant during prep sessions. That applies to the display of a single photo of the defendant or groups of photos that include the defendant. Moreover, showing a witness during trial preparation a photo of a single person who he has not seen before is like conducting a show-up long after a crime. It is tantamount to a new and suggestive identification procedure. Likewise, showing an array of photos that includes a new photo of the defendant is the functional equivalent of a new identification procedure with an important difference; having seen a photo of the defendant before, the repetition raises the possibility of mug shot commitment.

Instructor's comment – In addition to the Court's decision in Washington, since 2011, Chief Justice Rabner has written all of the important decisions related to witness identification and its inherent fallibility. See State vs. Henderson, 208 N.J. 208(2011); State vs. Chen, 208 N.J. 307(2011) (Identification tainted by non-police suggestive behavior); State vs. Watson, 254 N.J. 558(2023) (Inherent prejudice in first-time, in-court witness identification of the defendant); State vs. Anthony, 237 N.J. 213(2019) (Due to the possibility of confirmatory feedback, it is thus critical for law enforcement to record a witness' full statement of confidence when an identification is first made -- before any possible feedback.)