Garden State CLE Presents:

New Jersey Search and Seizure Annual Review - 2025

Instructors

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Lesson Plan

Body-Worn Cameras During Service of a Search Warrant
State vs. Seligman, 480 N.J.Super 509(App.Div.2025)

(a) In General – With certain exceptions, N.J.S.A. 40A:14-118.5 requires law enforcement officers to activate a body-worn camera (BWC) while on duty. This obligation is further refined by a directive from the Attorney General which requires that body-worn cameras be activated during the execution of a search warrant. The BWC statute also provides an evidential sanction against the prosecution if the cameras are not engaged when required in the form of an adverse inference.[1] The question presented in this case is whether the failure of the police to comply with the BWC statute requires the suppression of evidence seized during the execution of a knock and announce search warrant.

(b) Case Overview – Police executed a knock and announce search warrant at the defendant's apartment. The police serving the warrant did not activate the BWC until entry had been made; that is to say the knock and announce component of the search warrant was not recorded. Police recovered distribution-level controlled substances, drug paraphernalia and cash as a result of their search. In his motion to suppress evidence, the defendant maintained that the police violation of the BCW statute and the Attorney General's mandated procedures required suppression of the evidence. Alternatively, the defendant argued that he was entitled to an exculpatory inference that the police did not knock and announce their presence based upon the relief afforded to defendants under the statute.

(c) Analysis and Review – The Appellate Division panel ruled that suppression of evidence is supported by violations of the constitution as opposed to statutory violations. Moreover, notwithstanding any issue of a favorable inference for the defendant under the statute, the trial court had made a specific finding that the police fully complied with the knock and announce requirement in the search warrant.

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[1] N.J.S.A. 40A:14-118.5(q)(2) provides that if a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this act or intentionally interferes with a body worn camera's ability to accurately capture audio or video recordings there shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured.

Establishing Probable Cause in Marijuana Cases
State vs. Gomez, 481 N.J.Super 109(App.Div.2025)

(a) In General – The Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act[2] decriminalized possession and distribution of small quantities of marijuana. However, in so doing, the Legislature did not repeal the general statutes that criminalize possession with intent to distribute marijuana. Thus, raw information that a subject possessed marijuana does not necessarily implicate any type of criminal activity. In fact, under N.J.S.A. 2C:35-5(a), a person who possesses marijuana with intent to distribute in a quantity of one ounce or less is subject to a written warning for a first offense. Only second or subsequent offenses are deemed to be crimes. Given this statutory scheme, is it necessary for the police when applying for a search warrant related to possession of marijuana with intent to distribute that the affiant aver that there is probable cause to believe that the amount in question is in excess of an ounce or that the defendant has been previously convicted of a first offense that was subject to a warning?

(b) Case Overview – The investigating detective in a suspected drug distribution enterprise gathered evidence in the form of two controlled purchases of drugs from the defendant as well as from a long-term surveillance of the defendant's residence which showed evidence of drug sales. Based upon the evidence he had gathered, the detective prepared a search warrant application and presented it to a judge of the Superior Court. The judge authorized the search warrant and the detective served it the following day. The ensuing search yielded firearms, distribution-levels of controlled dangerous substances, drug paraphernalia and cash. The defendant moved to suppress the evidence seized under the authority of the warrant, arguing that the affiant had not established probable cause because possession with intent to distribute marijuana is not necessarily a crime or petty offense in New Jersey any longer.

(c) Analysis and Review – The Appellate Division panel held that because distribution of any amount of unregulated marijuana is still illegal, the search warrant application did not need to allege defendant sold a specific amount of marijuana before the court approved it. Probable cause for the search warrant was amply supported even though defendant had not been previously issued a warning

[2] N.J.S.A. 24:6I-31 to -56; and N.J.S.A. 2C:35-5 to -10.

for distributing one ounce or less of marijuana, and despite the quantities of marijuana sold being omitted from the warrant application. The marijuana amendments to the Code of Criminal Justice do not affect the analysis for determining if probable cause exists for issuance of a search warrant. The warning is a condition precedent to prosecution for distribution of less than one ounce of marijuana, not a precondition to apply for or obtain a search warrant. This required warning has no bearing in determining probable cause that a crime occurred or is occurring. The amended marijuana statutes' purposes were to set up a regulated process for the legalized use and purchase of cannabis, not deter or hinder law enforcement's investigation of illegal marijuana distribution. It was not designed to endanger those willing to assist law enforcement, or to jeopardize law enforcement officers acting in an undercover capacity.

Exigent Circumstances
State vs. Bryant, ___ N.J. Super ___(App.Div.2025)
2025 WL 1583917

(a) In General – The existence of exigent circumstances confronting the police will generally excuse them from obtaining a search warrant. It is the emergency nature of the circumstances, the need for immediate action and the lack of time to obtain a search warrant that supports this exception to the warrant requirement.

The term "exigent circumstances" is inexact. It is incapable of precise definition because, by its nature, the term takes on form and shape dependent on the facts of any given case. The determination whether exigent circumstances existed at the time of the disputed search is highly fact-sensitive and requires the court to assess the totality of the circumstances. As in any exception, the concept of objective reasonableness of the police conduct is critical. Simply stated, the question is were the investigating police objectively confronted with such an emergency that there was no time to seek a search warrant because the public would be endangered or vital evidence would be lost in the absence of immediate action?

(b) Case Overview – As part of an ongoing investigation into a person of interest who had fled the scene of a motor vehicle stop, the police detained an individual who had been a passenger in the suspect's vehicle. Police questioning the passenger produced an admission from her that there was a forearm in a backpack she had been carrying which was in police custody and inaccessible to anyone. The police conducted a search of the backpack and recovered a firearm. At the

motion to suppress, the prosecution sought to justify the search based upon exigent circumstances.

(c) Analysis and Review – The Appellate Division panel ruled that there was no objective evidence of exigency in this case. At the moment the police chose to search inside of the backpack, there was no realistic possibility that neither the former passenger nor defendant could have grabbed it, opened it, and retrieved the gun. The former passenger was in the back seat of the squad car with her hands cuffed behind her back. The backpack was in the front seat and out of her reach, separated by a Plexiglas barrier. The former passenger cooperatively divulged to an investigating police officer that she thought defendant had put a weapon inside the backpack. If she intended to somehow retrieve the gun herself or wanted defendant to somehow gain access to it if he returned, she would not have volunteered that information. The officer even thanked her for telling him about the weapon. Her cooperation was manifest.

The backpack by that point was plainly in the control of the police. Once they learned from the former passenger that it contained a weapon, and then secured the backpack, the police should have applied for a warrant, allowing the backpack to be searched. They did not do so. Instead, they decided to open the backpack immediately.

As we noted above and underscore here, the State has not argued the police had consent to open the backpack and has not addressed the consent-to-search factors applicable under case law.

Prosecutor's Permission to Conduct a Consensual Intercept
State vs. Barclay, 479 N.J.Super 451(App.Div.2024)

(a) In General – The interception of telephonic communications is controlled by the New Jersey Wiretapping and Electronic Surveillance Control Act (Wiretap Act or Act), N.J.S.A. 2A:156A-1 to 37. Under N.J.S.A. 2A:156A-4(c), a law enforcement officer may intercept and record a telephonic communication when a party to the conversation allows them to listen in on the phone call. Recordings made under this provision are known as consensual interceptions, a reference to the prior consent that must be given by the person who is a party to the telephonic communication and who is acting at the direction of a law enforcement officer.[3]

[3]See discussion in State vs. Worthy, 141 N.J. 368(1995) and State v. K.W., 214 N.J. 499(2013).

While a consensual interception does not require prior judicial approval in the form of a wiretap order, the statute requires police to obtain the prior approval of the Attorney General or designee, or a county prosecutor or designee. There is no mandate in the statute that such approval be in writing, unlike the approval necessary for seeking a judicial warrant to intercept telephone communications.[4]

(b) Case Overview – This is an appeal of the denial of a post-conviction relief application. The petitioner maintained that the failure of his counsel to raise the issue of the need for approval in writing from the prosecutor rendered the consensual intercept evidence in his case subject to suppression. As such, according to the petitioner, both his trial and appellate counsel had been ineffective. The Appellate Division panel affirmed the motion judge's decision and held that the consensual intercept statute does not require that approval from the prosecutor be in writing.

Installation of a Vehicle GPS Tracking Device
State vs. Johnson, ___ N.J.Super ___(App.Div.2024)
2025 WL 1559996

(a) In General – It is now well-established under Fourth Amendment doctrine that a search warrant is required for installing a global positioning satellite tracking device on a motor vehicle.[5] An important collateral issue relates to the reasonableness of the methods used by law enforcement for the surreptitious installation of such a device, especially when it has not been specified in the authorizing search warrant. Essentially, reasonableness becomes a function of time, place and manner when the limitations on surreptitious installation have not been spelled out in the search warrant.

(b) Case Overview – In this case the New Jersey State Police obtained a communications data warrant (CDW) that authorized the surreptitious installation of a global positioning system (GPS) device on a vehicle to electronically monitor its movements. The police initially intended to install the device while the vehicle was on a public street or in a public parking lot. When that failed, they decided to install the device while the vehicle was parked in the defendant's driveway. The

[4]N.J.S.A. 2A:156A-8 provides that the Attorney General, county prosecutor or a person designated to act for such an official may authorize, in writing, an *ex parte* application to a judge designated to receive the same for an order authorizing the interception of a wire, or electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of [specified crimes].

[5]United States vs. Jones, 565 U.S. 400, 132 S.Ct. 945, 181 L.Ed.2d 911(2012).

CDW did not expressly authorize entry onto the driveway; nor did the State Police seek prior judicial authorization to enter onto defendant's residential property when they abandoned the plan to install the device on a public street or parking lot. Accordingly, was it reasonable for the police to enter upon the defendant's curtilage for the purpose of installing the GPS device?

(c) Analysis and Review – The Appellate Division panel held that the governing case law makes clear that the police entry onto the driveway in these circumstances constituted a search regulated by the United States and New Jersey Constitutions. The top of the driveway where the subject vehicle was parked was part of the curtilage of defendant's home and was thus constitutionally protected. Furthermore, the State failed to establish that the State Police had an implied license under the curtilage doctrine to approach the vehicle to install the GPS device. State and federal curtilage jurisprudence recognizes that visitors, such as delivery persons, may be privileged to enter onto private residential property and follow a path leading to the home's front entrance. But here, the record showed that the State Police turned away from the pathway leading to the front door as they proceeded to the subject vehicle to attach the device. Moreover, the implied license caveat to the curtilage doctrine would not, in any event, authorize police to enter the driveway for the purpose of installing a GPS device, since that is not something visitors would be expected or permitted to do.

Nor did the State establish that the CDW itself authorized entry onto defendant's residential premises. Under the plain language of the Fourth Amendment and Article I, Paragraph 7, a search warrant must particularly, not impliedly, describe the place to be searched. Here, the CDW did not mention the driveway much less expressly designate it as a place to be entered/searched. We emphasize this is not a situation where police had a warrant to enter the house and the only question is whether the driveway falls within the geographic scope of the warrant's search authorization. While the CDW expressly authorized a police incursion upon the subject vehicle, it did not authorize an incursion on defendant's residential property. Police were obligated either to request judicial authorization to enter onto defendant's residence as part of the initial CDW application, go back to the issuing judge to obtain express authorization once the initial installation plan failed, or establish that a recognized warrant exception applied.

Miranda - Admissions Following Administration of Warnings
State vs. K.H., ___ N.J.Super ___(App.Div.2025); 2025 WL 1572283

(a) In General – Recent developments in New Jersey law have established an important distinction between a defendant who simply invokes his right to remain silent following Miranda[6] warnings as opposed to a defendant who requests counsel. Whenever an accused has invoked his right to have counsel present during custodial interrogation, the questioning must cease and cannot resume until counsel has been made available to him, unless the accused, on his own, initiates further communication, exchanges, or conversations with the police.[7] Additionally, police officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney. By contrast, when the accused has merely indicated a desire to remain silent, the police may not approach the accused for two hours. Thereafter, the accused must receive fresh Miranda warnings, and be questioned by a different officer on the subject of an offense different from the one for which the accused is in custody.[8]

(b) Case Overview – The defendant had been arrested and charged with aggravated sexual assault. After receiving his Miranda warnings, he indicated to the police that he wished to remain silent. Afterwards, the police approached the defendant and requested he consider signing a consent to search form which would enable the police to obtain a buccal swab from his mouth for the purpose of DNA testing. The defendant signed the form and voluntarily allowed the buccal swab. He subsequently challenged the consent to search as having been obtained in violation of his right to remain silent.

(c) Analysis and Review – The Appellate Division did not have to decide the substantive issue about whether the defendant had voluntarily waived his right to remain silent in providing consent to the buccal swab because the evidence would have been obtained in any event under the inevitable discovery exception to the warrant requirement. Rather, the significance of this decision is the distinction between the defendant who merely wishes to exercise his right to remain silent as opposed to the defendant who request counsel. Police may not interact with the latter of these two categories of defendants unless counsel is present. This categorical rule was recently set forth in State vs. Amang.[9]

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[6]Miranda vs. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[7]Edwards vs. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). See State vs. Amang, ___ N.J. Super ___(App.Div.2025); 2025 WL 951862.
[8]State vs. Hartley, 103 N.J. 252, 261, 511 A.2d 80(1986).
[9]State vs. Amang, ___ N.J.Super ___(App.Div.2025); 2025 WL 951862.

Miranda
Consent to Search Following Administration of Warnings
State vs. Amang, ___ N.J.Super ___(App.Div.2025); 2025 WL 951862

(a) In General – Recent developments in New Jersey law have established an important distinction between a defendant who simply invokes his right to remain silent following Miranda[9] warnings as opposed to a defendant who requests counsel. Whenever an accused has invoked his right to have counsel present during custodial interrogation, the questioning must cease and cannot resume until counsel has been made available to him, unless the accused, on his own, initiates further communication, exchanges, or conversations with the police.[9] Additionally, police officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney. By contrast, when the accused has merely indicated a desire to remain silent, the police may not approach the accused for two hours. Thereafter, the accused must receive fresh Miranda warnings, and be questioned by a different officer on the subject of an offense different from the one for which the accused is in custody.[9]

(b) Case Overview – The defendant had been arrested and charged with aggravated assault and related offenses perpetrated upon his young daughters. While in police custody, after receiving his Miranda warnings, he indicated to the police that he wished to remain silent and to consult with counsel prior to any more questioning. Afterwards, the police approached the defendant and requested he consider signing a consent to search form which would enable the police to enter his home and provide care for his dog. The police also intended to search for illegally possessed firearms within the defendant's residence. The defendant signed the form and the police conducted the residential search, recovered prohibited forearms, ammunition and other contraband. That is to say that even if the defendant had declined to provide consent, the police would have applied for and received a search warrant to recover the illegally possessed firearms. Rather, the significance of this decision is the distinction between the defendant who merely wishes to exercise his right to remain silent as opposed to the defendant who requests counsel. Police may not interact with or question the latter of these two categories of defendants unless counsel is present. This new rule of law is categorical and will prevent the police from seeking consent to search from a defendant who has previously requested counsel until counsel is present.

(c) Analysis and Review – The Appellate Division did not have to decide the substantive issue about whether the defendant had voluntarily waived his right to remain silent in providing consent to the residential search because the evidence would have been obtained in any event under the inevitable discovery exception to the warrant requirement. That is to say that even if the defendant had declined to provide consent, the police would have applied for and received a search warrant to recover the illegally possessed firearms. Rather, the significance of this decision is the distinction between the defendant who merely wishes to exercise his right to remain silent as opposed to the defendant who requests counsel. Police may not interact with or question the latter of these two categories of defendants unless counsel is present.

The Moment of Threat Rule
Barnes vs. Felix, 145 S.Ct. 1353(2025)

Respondent Roberto Felix, Jr., a law enforcement officer, pulled over Ashtian Barnes for suspected toll violations. Felix ordered Barnes to exit the vehicle, but Barnes began to drive away. As the car began to move forward, Felix jumped onto its doorsill and fired two shots inside. Barnes was fatally hit but managed to stop the car. About five seconds elapsed between when the car started moving and when it stopped. Two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot. Barnes's mother sued Felix on Barnes's behalf, alleging that Felix violated Barnes's Fourth Amendment right against excessive force. The District Court granted summary judgment to Felix, applying the Fifth Circuit's "moment-of-threat" rule. The Court of Appeals affirmed, explaining that the moment-of-threat rule requires asking only whether an officer was "in danger at the moment of the threat that resulted in [his] use of deadly force." Under the rule, events "leading up to the shooting" are "not relevant." Here, the "precise moment of threat" was the "two seconds" when Felix was clinging to a moving car. Because Felix could then have reasonably believed his life in danger, the panel held, the shooting was lawful.

Held: A claim that a law enforcement officer used excessive force during a stop or arrest is analyzed under the Fourth Amendment, which re quires that the force deployed be objectively reasonable from "the perspective of a reasonable officer at the scene." Graham vs. Connor, 490 U.S. 386, 396. The inquiry into the reasonableness of police force re quires analyzing the "totality of the

circumstances." County of Los Angeles vs. Mendez, 581 U.S. 420, 427–428; Tennessee vs. Garner, 471 U.S. 2. That analysis demands "careful attention to the facts and circum stances" relating to the incident. Graham, 490 U.S. at 396. Most notable here, the "totality of the circumstances" inquiry has no time limit. While the situation at the precise time of the shooting will often matter most, earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones. Prior events may show why a reasonable officer would perceive other wise ambiguous conduct as threatening, or instead as innocuous. Plumhoff vs. Rickard, 572 U.S. 765, well illustrates this point. There, an officer's use of deadly force was justified "at the moment" partly because of what had transpired in the preceding period. The moment-of-threat rule applied below prevents that sort of attention to context, and thus conflicts with this Court's instruction to analyze the totality of the circumstances. By limiting their view to the two seconds before the shooting, the lower courts could not take into account anything preceding that final moment. So, for example, they could not consider the reasons for the stop or the earlier interactions between the suspect and officer. And because of that limit, they could not address whether the final two seconds of the encounter would look different if set within a longer timeframe. A rule like that, which precludes consideration of prior events in assessing a police shooting, is not reconcilable with the fact-dependent and context-sensitive approach this Court has prescribed. A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders. The Court does not address a separate question about whether or how an officer's own "creation of a dangerous situation" factors into the reasonableness analysis. The courts below never confronted that issue, and it was not the basis of the petition for certiorari.