

New Jersey Continuing Legal Education Services, llc

Presents:

Police Report Writing:
Recovery of Evidence from a Warrantless
Search



Lesson Plan & Materials

Part I - Introduction

- 1. Motions to Suppress Evidence – In General**
 - a. Burden of production**
 - b. Burden of Proof**
 - c. Effect of a motion when granted**

- 2. Officer’s Report Preparation & Review**
 - a. Form: grammar, spelling, presentation**
 - b. Substance: communicating guilt [JETS]:**
 1. What exception to the warrant requirement justifies this search? [J]
 2. What are the elements of this exception? [E]
 3. What truthful facts and circumstances support exception? [T]
 4. Sufficient detail to support totality of the circumstances? [S]

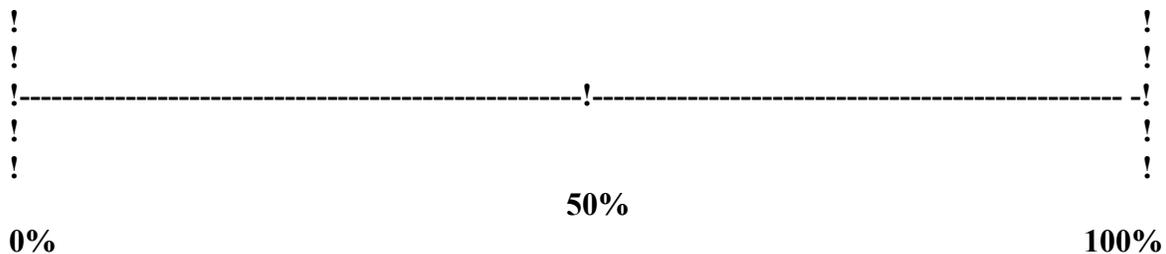
- 3. Defense’s Report Analysis and Review**

- 4. Prosecutor’s Report Analysis and Review**

- 5. Exceptions to the Warrant Requirement & Their Elements – In General**

Part II – Critical Words, Phrases & Concepts

1. The Belief Scale



2. The Fourth Amendment v. New Jersey Constitution, Article I, para. 7

3. Unreasonable search - defined

4. Probable cause – “A well grounded suspicion” (State v. Burnett, 42 N.J. 377, 387 (1964)).

5. Reasonable Suspicion – (State v. Thomas, 110 N.J. 673 (1988))

6. Totality of the circumstances - (State v. Novembrino, 105 N.J. 95 (1987))

7. Objectively reasonable - (State v. Novembrino, 105 N.J. 95 (1987))

8. Exigent Circumstances– (State v. Johnson, 193 N.J. 528 (2008))

9. Automatic Standing – (State v. Alston, 88 N.J. 211 (1981))

10. Abandonment – (State v. Johnson, 193 N.J. 528 (2008))

Part III – Automobile Searches

a. Motor Vehicle Stop

- 1. Motor Vehicle Stop – Reasonable suspicion (of a violation, unlicensed driver, not registered, occupant subject to seizure- Delaware v. Prouse, 440 U.S. 648 (1979))**
- 2. Community Caretaking Exception – Activity “totally divorced” from law enforcement activities.**
- 3. Duration of Stop – “No longer than necessary to effectuate its purpose.” (State v. Hickman, 335 N.J. Super. 623 (App. Div. 2000))**

In cases of delay, what was its cause?

**Actions taken by driver or occupants
Communications difficulties
Other law enforcement-related problems**

- 4. Interview of driver and occupants on issues unrelated to the stop v. Delay**

b. Motor Vehicle Search – Automobile Exception

- a. Elements- Probable Cause and Exigent Circumstances (State v. Cooke, 163 N.J. 657, 676 (2000). “[E]xigent circumstances” is, by design, inexact. It is incapable of precise definition because, by its nature, the term takes on form and shape depending on the facts of any given case. We reiterate that exigency in the constitutional context amounts to “circumstances that make it impracticable to obtain a warrant when the police have probable cause to search the car.”**
- b. Judged under the totality of the circumstances**

c. Motor Vehicle Search – Protective Search

- a. Elements – Reasonable suspicion requiring more than subjective impressions of threat to safety (State v. Lund, 119 N.J. 35 (1990) and State v. Thomas, 110 N.J. 673 (1988))**
- b. Scope limited to interior passenger compartment**
- c. Totality of circumstances test**

Part III – Automobile Searches

d. Plain View/Plain Smell/Plain Touch

a. Elements of this Exception:

- 1. Officer was Lawfully in Viewing Area – (i.e. Vehicle was legally stopped/seized)**
- 2. Discovery was Inadvertent – (Did not know in advance where it was & did not intend beforehand to seize it)**
- 3. Officer Had P/C to Associate the Object with Evidence of Criminal Activity -**

e. Consent

a. Elements of this Exception under State v. Carty, 170 N.J. 632 (2002):

- 1. Consent given free, voluntarily and knowingly (knowledge of right to refuse)**
- 2. Reasonable & Articulable Suspicion that Evidence of Crime or Contraband can be found with the Vehicle. (Note: applies to automobile searches only)**

b. Use of Consent to Search Form

b. Burden of Proof is Clear & Convincing Evidence.

Part IV – Searches of the Person

a. Incident to Lawful Arrest

- a. Elements – Lawfulness of Arrest Based upon P/C, Active Warrant, NCIC
- b. Search not Based upon P/C
- c. Object of Search to Recover Evidence, Weapons, Implements of Escape
- d. Plain View for Objects in Possession or Area of Arrestee

b. Pat-down/Frisk (Terry Stop & Frisk)

a. Elements -

1. Reasonable Suspicion to Detain – Terry v. Ohio, 392 U.S. 1 (1968)

2. Reasonable Suspicion to Search (Frisk): [When an officer] has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; *the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.* And in determining whether the officer acted reasonably in such circumstances, due weight must be given, *not to his inchoate and unparticularized suspicion or “hunch,”* but to the *specific reasonable inferences* which he is entitled to draw from the facts in light of his experience. The reasonableness of the search, therefore, is to be measured by an *objective* standard. More than an officer's generalized statements and subjective impressions are required. The officer must be able “to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.

3. Stress Totality of the Circumstances

- 3. Does not apply to “Man with a gun” calls

Part IV – Searches of the Person

c. Strip Searches

1. Strip Search Defined – (N.J.S.A. 2A:161A-3(a)) - For purposes of this act, a “strip search” means the removal or rearrangement of clothing for the purpose of visual inspection of the person's undergarments, buttocks, anus, genitals or breasts. The term does not include any removal or rearrangement of clothing reasonably required to render medical treatment or assistance or the removal of articles of outer-clothing such as coats, ties, belts or shoelaces.

b. For purposes of this act, a “body cavity search” means the visual inspection or manual search of a person's anal or vaginal cavity.

2. D/P, Petty D/p and traffic offenses – (N.J.S.A. 2A:161A-1) - a. The search is authorized by a warrant or consent;

b. The search is based on probable cause that a weapon, controlled dangerous substance, as defined by the “Comprehensive Drug Reform Act of 1987,” ... or evidence of a crime will be found and a recognized exception to the warrant requirement exists; or

c. The person is lawfully confined in a municipal detention facility or an adult county correctional facility and the search is based on a reasonable suspicion that a weapon, controlled dangerous substance, as defined by the “Comprehensive Drug Reform Act of 1987,” ... or contraband, as defined by the Department of Corrections, will be found, and the search is authorized pursuant to regulations promulgated by the Commissioner of the Department of Corrections.

3. Reports and Procedures - (N.J.S.A. 2A:161A-4) Any strip search or body cavity search conducted under this act shall be performed by persons of the same sex as the arrested person and at a location where the search cannot be observed by persons not physically conducting the search. The law enforcement officer or other person authorized to conduct a strip search or body cavity search shall obtain permission of the officer in charge of the station house to conduct the search and shall report the reason for the search on the record of arrest. Where emergency conditions require immediate action to prevent bodily harm to the officer or others, the requirements of this section shall not apply. In all cases where a strip search is conducted as an exception to the requirements of this section, the officer conducting the search shall file a separate written report setting forth the emergency conditions which required the immediate action. This written report shall be filed with and reviewed by the officer in charge who had the authority to authorize a strip search.

b. Reports required pursuant to this section shall not be deemed public records within the meaning of P.L.1963, c. 73 ([C. 47:1A-1 et seq.](#)) but, upon request, shall be made available to the person searched, the county prosecutor, the Attorney General or the Commissioner of the Department of Corrections.

c. Nothing in this section is intended to preclude lawful use of the report of a strip search or body cavity search by law enforcement officials, the county prosecutor or officials responsible for the administration of a county or State correctional facility.

Part V – Residential Entry & Searches

a. Probable Cause & Exigent Circumstances

a. Elements – (State v. LaBoo, 396 N.J. Super. 97 (App. Div. 2007)).

1. Probable Cause (Payton v. New York, 445 NU.S. 573 (1980)).

2. Exigent Circumstances - Exigent circumstances deliberately created by the police that are not objectively reasonable do not provide a basis for a constitutionally valid warrantless search. The following factors should be considered when determining whether to validate a warrantless search under exigent circumstances:

[T]he degree of urgency and the amount of time necessary to obtain a warrant; the reasonable belief that the evidence was about to be lost, destroyed, or removed from the scene; the severity or seriousness of the offense involved; the possibility that a suspect was armed or dangerous; and the strength or weakness of the underlying probable cause determination.

3. Must be supported by reasonable investigative tactics – not police-created exigency

4. Must be for a serious offense (not d/p)

b. Hot Pursuit:

“The predominant exception” to the warrant requirement is exigent circumstances. Probable cause, when combined with exigent circumstances, “will excuse a police officer's failure to have secured a written warrant prior to a search for criminal wrongdoing.” Generally, when there is probable cause to believe a defendant has committed a crime and eluded apprehension by the police by retreating into his home, there is authority for the police, who are in immediate or continuous (i.e., “hot”) pursuit, to follow the fleeing felon, and there is a reasonable expectation that a delay in obtaining a warrant would result in the destruction of evidence

Part V – Residential Entry & Searches

c. Emergency Aid – Elements (State v. Cassidy, 179 N.J. 150 (2004)).

- 1.) The public official must have an objectively reasonable belief, even if later found to be erroneous, that an emergency demands immediate assistance in order to protect or preserve life, or to prevent serious injury;
- 2.) The provision of assistance must be the prime motive for the public official's warrantless entry; and,
- 3.) Any search must be limited to those places that have a nexus to the emergency.

d. Consent. – Elements (state v. Johnson, 68 N.J. 349 (1975)).

1. **Consent freely, voluntarily and knowingly given**
2. **Not the product of force, threats or coercion;**
3. **Consent can be limited as to time and place;**
4. **Consent can be withdrawn at any time;**
5. **State must demonstrate defendant was aware of his right to refuse consent;**
6. **Person giving consent must have apparent authority.**