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The New Jersey Arrest, Search & Seizure Review - 2015

Lesson Plan

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I. New Rules of Court

7:5-2. Motion to Suppress Evidence

(a) Jurisdiction. The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a municipal court judge or without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. In matters beyond the trial jurisdiction of municipal courts, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

Rule 7:5-2(b) Procedure. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress evidence shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

Rule 7:5-2(e) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Franks v. Delaware, 438 US 154 (1978) Where a defendant makes a substantial preliminary showing of material misstatements in a search warrant affidavit, made knowingly or with reckless disregard for the truth, he must be afforded an opportunity to inquire further into the veracity of the affidavit. If at such inquiry the defendant proves such falsity by a preponderance of the evidence, the warrant is invalid and the evidence seized thereby must be suppressed.

State v. Ravotto, 169 NJ 227 (2001) - With or without a warrant, the police may not use unreasonable force to perform a search or seizure of a person.

7:5-4. Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d)

The procedures set forth in Rule 7:5-2 shall apply to a motion to suppress records obtained pursuant to a subpoena issued under Rule 7:7-8(d) to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the body of an operator of a vehicle or vessel, in matters within the trial jurisdiction of the municipal court. In matters beyond the jurisdiction of the municipal court, the motion shall be made and heard in the Superior Court.

State v. Dyal, 97 NJ 229 (1984)

State v. Bodtmann, 239 NJ Super. 33 (App. Div. 1990) – "Reasonable basis to believe" standard

Rule 3:5-7. Motion to suppress evidence and for return of property

(a) Applicability; Notice; Time. On notice to the prosecutor of the county in which the matter is pending or threatened, to the applicant for the warrant if the search was with a warrant, and to co-indictees, if any, and in accordance with the applicable provisions of R. 1:6-3 and R. 3:10, a person claiming to be aggrieved by an unlawful search and seizure and having reasonable grounds to believe that the evidence obtained may be used against him or her in a penal proceeding, may apply to the Superior Court in the county in which the matter is pending or threatened to suppress the evidence and for the return of the property seized (1) without a warrant if the matter involves an indictable crime or (2) where the search warrant was issued by a Superior Court judge, even though the offense charged or to be charged may be within the jurisdiction of a municipal court. A motion filed in the Superior Court shall be made pursuant to R. 3:10-2. When an offense charged or to be charged is within the jurisdiction of the Municipal Court, a motion to suppress evidence and for the return of property seized resulting from a search warrant issued by a Municipal Court judge or seized without a warrant shall be filed pursuant to R. 7:5-2.

II. Searches of the Person

Urine Samples

ORDER - State v. Verpent, 221 NJ 494 (2015)

The Court having granted defendant's petition for certification in this matter on a suppression issue and two trial issues; and

The Court having heard argument on the merits on November 7, 2013, and the Court having been asked to consider the application of *Missouri v. McNeely*, —— U.S. ——, 133 *S.Ct.* 1552, 185 *L.Ed.*2d 696 (2013) to the suppression issue raised herein; and

Following the oral argument conducted in this matter, a question about the retroactive effect to be given to *McNeely* having been raised; and

The Court having heard argument on that retroactivity question on December 3, 2014, in *State v. Adkins,* (A–91–13), and, on that same day, having heard reargument in this matter limited to the question of *McNeely* 's retroactive application; and

The Court having issued its decision in *State v. Adkins,* 221 *N.J.* 300, 113 *A.*3d 734 (2015), on May 4, 2015, holding that *McNeely* shall receive retroactive application;

It is hereby ORDERED as follows:

(1) A new suppression hearing must be conducted in this matter in order that exigency may be assessed on a newly developed and fuller record in light of this Court's holding in *Adkins*;

(2) The judgment on the suppression issue is reversed and the matter is remanded for the new suppression hearing; and

(3) The Court has determined that certification was improvidently granted as to the two trial issues, and the appeal as to those issues is dismissed.

Commentary – The prior case law as expressed in the unpublished App. Div. decision captioned State v. Verpent (2012 WL 2505675) which followed the precedent in State v. Malik, 221 NJ Super. 114 (App. Div. 1987) (incident to arrest & exigency) is no longer valid in light of *McNeely.*

III. Automobile Searches

Mistake of Law

Heien v. North Carolina, 135 S. Ct. 530 (2014)

A traffic stop for a suspected violation of law is a "seizure" of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment. All parties agree that to justify this type of seizure, officers need only reasonable suspicion—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law. The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. We hold that it can.

As the text indicates and we have repeatedly affirmed, the ultimate touchstone of the Fourth Amendment is 'reasonableness. To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them "fair leeway for enforcing the law in the community's protection. We have recognized that searches and seizures based on mistakes of fact can be reasonable.

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.

Mistake of Fact – State v. Pitcher, 379 NJ Super. 308 (App. Div. 2005)

Mistake of Law – State v. Puzio, 379 NJ Super. 378 (App. Div. 2005); State v. Witt, 435 NJ Super. 608 (App. Div. 2014) (pending Supreme Court decision)

Length of Traffic Stop Detention

Rodriguez v. United States, 135 S. Ct. 1609 (2015)

In *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision.

State v. Dickey, 152 NJ 468 (1998) (more than 2 hours)

State v. Chapman, 332 NJ Super. 452 (App. Div. 2000) (delay for investigative questioning)

Expectation of Privacy in Stolen Motor Vehicle

State v. Taylor, 440 NJ Super. 515 (App. Div. 2015)

[W]e conclude that the question of whether defendant had a reasonable expectation of privacy in the motor vehicle cannot be solely determined as a matter of law, but requires a fact-sensitive inquiry. Such an inquiry is required since we decline the State's invitation to formulate a bright-line rule, as a matter of law, that an individual operating or occupying a stolen motor vehicle, regardless of their knowledge of its status, does not have a reasonable expectation of privacy.

In view of our reading of [prior New Jersey case law], which specifically address the issue of knowledge, we reject the State's "strict liability" argument that knowledge of the motor vehicle's status is irrelevant to a determination of a reasonable expectation of privacy. To be sure, one can envision other settings where an "unknowing occupier" of a stolen motor vehicle would have a reasonable expectation of privacy that would not offend societal norms.

Expectation of Privacy – Exterior of Motor Vehicle

State v. Jessup, 441 NJ Super. 386 (App. Div. 2015)

We agree with the State that defendant had no privacy interest in the top of the rear tire of the red Corolla. Thus concepts such as "the automobile exception" or "exigent circumstances," have no relevance here. The CDS were hidden in a clear plastic bag on top of the tire. Officer Burgess could see defendant retrieve the CDS through the permissible use of binoculars

It was not necessary to open the door of the car, or reach inside the car, or even search around the underside of the car, to obtain the CDS. Defendant had no reasonable expectation of privacy in the area on top of the rear tire on the exterior of the car.

A person has no legitimate expectation of privacy in the exterior of a tire on a car, which is easily accessible to the public, and visible through the use of a flashlight.

A person who secretes an object on top of a tire assumes that vehicle will not move. The security of the hiding place is dependent on the vehicle remaining parked. Hiding CDS on a tire is comparable to hiding CDS in a tin under a car. We have held that a defendant who put CDS in such a tin "had no protected Fourth Amendment rights in the narcotics stash maintained remotely from his person.

Order to exit vehicle - passenger

State v. Bacome, 440 NJ Super. 228 (App. Div. 2015)

Not long before the Court decided *Maryland v. Wilson,* our Supreme Court considered the application of paragraph 7 of Article I of the New Jersey Constitution to police seizure of a driver or occupant from a vehicle stopped for a traffic violation. The Court concluded in *Smith* that "as applied *to drivers,*" *Mimms* 's per se rule passes state constitutional muster. (emphasis added). Unlike the per se rule that the Court ultimately adopted in *Maryland v. Wilson,* however, our Supreme Court "decline[d] to extend [*Mimms* 's] per se rule to passengers," and determined that "an officer must be able to point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle detained for a traffic violation.". The Court described the scope of this principle in the following way:

To support an order to a passenger to alight from a vehicle stopped for a traffic violation, the officer need not point to specific facts that the occupants are armed and dangerous. Rather, the officer need point only to some fact or facts in the totality of the circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car. Here, notwithstanding the presentation of this key fact through hearsay testimony, the judge initially made no finding regarding whether there was some fact or facts in the totality of the circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner.

Dissent by Judge Nugent

State v. Smith, 134 NJ 599 (1994)
Pennsylvania v. Mimms, 434 US 106 (1977)
Maryland v. Wilson, 519 US 408 (1997)

Pipeline retro-activity of *McNeely*

State v. Adkins, 221 NJ 300 (2015)

We hold that the Supreme Court's decision in *McNeely* applies retroactively to cases that were in the pipeline when it was decided. (This includes cases that are not yet final, pending on direct review, or being collaterally review.)

The Supreme Court has now clarified the appropriate test to be applied to warrantless blood draws, and we will adhere to that test without any superimposed exception. That said, we accept that our case law played a leading role in dissuading police from believing that they needed to seek, or explaining why they did not seek, a warrant before obtaining an involuntary blood draw from a suspected drunk driver. With that in mind, we return to the touchstone of the Fourth Amendment—reasonableness.

In holding that we shall retroactively enforce the Supreme Court's declaration that the totality-of-the-circumstances examination applies to all blood draws from suspected drunk drivers, we hold further that law enforcement should be permitted on remand in these pipeline cases to present to the court their basis for believing that exigency was present in the facts surrounding the evidence's potential dissipation and police response under the circumstances to the events involved in the arrest. Further, the exigency in these circumstances should be assessed in a manner that permits the court to ascribe substantial weight to the perceived dissipation that an officer reasonably faced. Reasonableness of officers must be assessed in light of the existence of the *McNeely* opinion. But, in reexamining pipeline cases when police may have believed that they did not have to evaluate whether a warrant could be obtained, based on prior guidance from our Court that did not dwell on such an obligation, we direct reviewing courts to focus on the objective exigency of the circumstances that the officer faced in the situation.

Missouri v. McNeely, 133 S. ct. 1552 (2013)

Exigent Circumstances

State v. Jones, 437 NJ Super. 68 (App. Div. 2014)
State v. Jones, 441 NJ Super. 317 (App. Div. 2015)

We have reviewed the facts of this case in light of *Adkins* to determine whether the situation faced by the officer presented an "objective exigency." As we noted in our earlier opinion, this was not a routine motor vehicle stop. The exigency of the circumstances did not depend solely upon the fact that alcohol dissipates in the blood. Defendant drove her vehicle into a car stopped at a traffic light, propelling it into a third car in front of it at approximately 7:00 p.m. at a busy intersection. Eleven police officers, at least two Emergency Medical Service (EMS) vehicles and four EMS personnel, two fire trucks and an unknown number of firefighters responded to the accident scene. Defendant was in her vehicle unconscious and bleeding. It took approximately one-half hour to extricate her from her heavily damaged car.. Both defendant and an occupant from one of the other vehicles, who was injured in the accident, were taken to the hospital for treatment.. Defendant did not regain consciousness until she was at the hospital. The investigation at the accident scene took several hours. The damage caused to a nearby building struck by defendant after hitting the vehicle raised a concern that the building might collapse. The blood sample from defendant was drawn by a nurse approximately one hour and fifteen minutes after police responded to the accident scene and, upon testing, had a blood alcohol content of 0.345.

Viewing the circumstances here objectively, we are satisfied the officer might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence [.] Under the totality of the circumstances analysis required by *Adkins,* we find no reason to disturb our prior decision reversing the order that suppressed the results of the blood sample analysis.

Defective Arrest Warrant

State v. Shannon, 222 NJ 576 (2015)

The arguments before the Court call into question the significance of law enforcement reliance on an ostensibly valid arrest warrant in assessing the constitutionality of an arrest as well as the application of the exclusionary rule.

Beginning with the constitutionality of defendant's arrest, there is no dispute in this case that, at the moment of defendant's arrest, no valid warrant was in effect. Defendant's arrest was based solely on the existence of the allegedly outstanding arrest warrant that, in fact, had been vacated eighteen months earlier but had not been removed from the computer database accessed by the dispatcher. No other probable cause provides a leg on which the State can stand to assert a lawful arrest. The inescapable consequence ... is that defendant was arrested illegally. The officer's belief, even in good faith, that a valid warrant for defendant's arrest was outstanding cannot render an arrest made absent a valid warrant or probable cause constitutionally compliant.

Justice Solomon dissent

The Court held in *State v. Novembrino*, 105 *N.J.* 95, 519 *A.*2d 820 (1987), only that, in recognition of the exclusionary rule's secondary function as a mechanism for the enforcement of citizens' constitutional rights, where law enforcement is involved in the error giving rise to the unlawful search or seizure, the police officer's good faith conduct is not a basis to avoid suppression. Reading *Novembrino* to require suppression for a purely judicial error, as the concurring opinion does, ignores the significant costs of suppressing competent evidence and renders the deterrent function of the exclusionary rule insignificant. In my view, the concurring opinion's conclusion cannot be reconciled with our subsequent decisions.

By holding that the officer's objectively reasonable conduct is irrelevant in a case in which no law enforcement personnel are remotely responsible for the impropriety of the arrest, the concurring opinion not only fails to give effect to "[t]he 'prime purpose' of the [exclusionary] rule,"

Search for Vehicle Credentials

State v. Keaton, 222 NJ 438 (2015)

[W]e find that the trooper was required to provide defendant with the opportunity to present his credentials before entering the vehicle. If such an opportunity is presented, and defendant is unable or unwilling to produce his registration or insurance information, only then may an officer conduct a search for those credentials. Because defendant was never provided with such an opportunity, we find that the trooper did not lawfully seize the contraband under the plain view doctrine. We also find that the community-caretaker doctrine is inapplicable because there was no need for an immediate warrantless search to preserve life or property.

Prior law on credential searches:

We have held that a traffic violation may justify a search for things relating to that stop. *State v. Boykins*, 50 *N.J.* 73, 77, 232 *A.*2d 141 (1967). If the vehicle's operator is unable to produce proof of registration, the officer may search the car for evidence of ownership. "Such a search must be reasonable in scope and tailored to the degree of the violation." *State v. Patino*, 83 *N.J.* 1, 12, 414 *A.*2d 1327 (1980). " '[A] search to find the registration would be permissible if confined to the glove compartment or other area where registration might normally be kept in a vehicle.' (quoting *State v. Barrett*, 170 *N.J.Super.* 211, 215, 406 *A.*2d 198 (Law Div.1979)); *see also State v. Pena–Flores*, 198 *N.J.* 6, 31, 965 *A.*2d 114 (2009) ("[W]here there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may [conduct a] search [of] the car for evidence of ownership ... confined to the glove compartment or other area where a registration might normally be kept in a vehicle."). Therefore, a search for registration in the rear of the vehicle would not be permissible. *Patino, supra,* 83 *N.J.* at 12, 414 *A.*2d 1327; *see also State v. Hayburn*, 171 *N.J.Super.* 390, 393–94, 409 *A.*2d 802 (App.Div.1979) (suppressing fruits of search of trunk, stating *Boykins* does not support broad proposition that all parts of car may be searched for registration certificate that driver cannot produce after traffic stop)

Protective Sweeps – In general

Michigan v. Long, 463 US 1032 (1983)

Search of passenger compartment of automobile, limited to those areas in which weapon may be placed or hidden, is permissible if police officer possesses reasonable belief based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant officers in believing that suspect is dangerous and may gain immediate control of weapons; issue is whether reasonably prudent man in the circumstances would be warranted in belief that his safety or that of others was in danger.

State v. Lund, 119 NJ 35 (1990)

To sum up, we agree with the position of the Attorney General that the *Michigan v. Long* rule is sound and compelling precedent and should be followed to protect New Jersey's police community. We have applied the rule of that case, which incorporates the *Terry* protective-search principles, in the search of a car. In making this ruling, we have no doubt about the good faith of the officer on patrol. New Jersey, along with the United States Supreme Court, has recognized that the good faith of police officers is civil justification for their conduct.

Maryland v. Buie, 494 US 325

When making an arrest under the authority of a warrant, law enforcement officers must be able to conduct, when necessary for safety's sake, a "quick and limited search" of a dwelling incident to an arrest. The case creates the "protective sweep" exception to the Fourth Amendment's warrant requirement.

State v. Davila, 203 NJ 97 (2010)

A protective sweep may only occur when (1) police officers are lawfully within private premises for a legitimate purpose, which may include consent to enter; and (2) the officers on the scene have a reasonable articulable suspicion that the area to be swept harbors an individual posing a danger. Where those substantive conditions are met, as a matter of procedure, the sweep will be upheld only if (1) it is conducted quickly; and (2) it is restricted to places or areas where the person posing a danger could hide. Importantly, when an arrest is not the basis for officer entry, the legitimacy of the police presence must be carefully examined as well as the asserted reasons for the protective sweep. Enhanced precautions are necessary to stem the possibility that a protective sweep is nothing more than an unconstitutional warrantless search. The police cannot create the danger that becomes the basis for a protective sweep, but rather must be able to point to dangerous circumstances that developed once the officers were at the scene. Where police are present in a home in a non-arrest context, there is too great a potential for the pretextual [sic] use of a protective sweep to turn an important tool for officer safety into an opportunity for an impermissible law enforcement raid.

State v. Gamble, 218 NJ 412 (2014)

Returning to the protective sweep of the van, the Court noted that it occurred only after the frisk of the van's occupants revealed that neither carried a weapon. Because of the circumstances that had precipitated the officers' arrival on the scene and the men's conduct, the frisk, however, heightened rather than allayed the officers' concern that there was a gun in the van that would be easily accessible to the men when allowed to return to the vehicle. Considering those circumstances, the Court held that the same rationale of allowing a cursory visual inspection for the safety of police officers that had justified protective sweeps of a home in *Maryland v. Buie*, 494 *U.S.* 325, 327, 110 *S.Ct.* 1093, 1094, 108 *L.Ed.*2d 276, 281 (1990) and *State v. Davila*, 203 *N.J.* 97, 116, 999 *A.*2d 1116 (2010), applies equally to limited protective searches of vehicles, where officers are permitted to ferret out weapons that might be used against police officers.

Protective Sweeps – Motor Vehicle

State v. Robinson, 441 NJ Super. 33 (App. Div. 2015)

Officer's protective sweep of interior of defendant's car for weapons was an unlawful search, given that there was no demonstrable need to sweep the car to make sure everything was safe for the officers after defendant and passenger had been placed under arrest and secured in patrol cars; police arrested defendant and passenger after learning from dispatch that the men had open warrants, searches of their persons were conducted incident to arrest, defendant and passenger were handcuffed and placed in patrol cars, neither was going to return to the car where there might be weapon they could use against officers, and the other two passengers, while not under arrest, were not licensed to drive, none of occupants made any attempt to retreat to car as if trying to get at a gun, and there was no reasonable suspicion that car contained gun.

Dissent by Judge Nugent

IV. Residential Searches

Emergency Aid Doctrine

State v. Hathaway, 222 NJ 453 (2015)

The emergency aid doctrine is derived from the commonsense understanding that *exigent circumstances* may require public safety officials, such as the police, firefighters, or paramedics, to enter a dwelling without a warrant for the purpose of protecting or preserving life, or preventing serious injury. The primary rationale for the doctrine is that neither the Fourth Amendment nor Article I, Paragraph 7 of our State Constitution requires that public safety officials stand by in the face of an imminent danger and delay potential lifesaving measures while critical and precious time is expended obtaining a warrant. For that reason, [a] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person.

When viewing the circumstances of each case, a court must avoid the distorted prism of hindsight and recognize that those who must act in the heat of the moment do so without the luxury of time for calm reflection or sustained deliberation. A court must examine the conduct of those officials in light of what was reasonable under the fast-breaking and potentially life-threatening circumstances that were faced at the time.

To justify a warrantless search under the emergency-aid doctrine, the State must satisfy a two-prong test. The State has the burden to show that "(1) the officer had an objectively reasonable basis to believe that an emergency require[d] that he provide immediate assistance to protect or preserve life, or to prevent serious injury and (2) there was a reasonable nexus between the emergency and the area or places to be searched. The emergency aid doctrine only requires that public safety officials possess an objectively reasonable basis to believe—not certitude—that there is a danger and need for prompt action. The reasonableness of a decision to act in response to a perceived danger in real time does not depend on whether it is later determined that the danger actually existed..

The scope of the search under the emergency aid exception is limited to the reasons and objectives that prompted the search in the first place. Therefore, police officers looking for an injured person may not extend their search to small compartments such as "drawers, cupboards, or wastepaper baskets. If, however, contraband is observed in plain view by a public safety official who is lawfully on the premises and is not exceeding the scope of the search, that evidence will be admissible.

Emergency Aid Doctrine

State v. Reece, 222 NJ 154 (2015)

[In *Frankel*], we held that the totality of the circumstances justified the officer's warrantless search under the emergency-aid doctrine because the dropped 9–1–1 call created "a duty to presume there was an emergency. Moreover, the defendant's nervous demeanor and the dispatcher's confirmation that the 9–1–1 call came from the defendant's phone reinforced the officer's suspicion that there was an incapacitated person in the home.

Similarly, the dropped 9–1–1 call in this case permitted [the police officer] to presume that there was an emergency. In light of that presumption, and based upon his observations—defendant denied making the 9–1–1 call while also claiming no one else was home, there were three cars in the driveway, there was an abrasion on defendant's hand, and defendant became agitated when asked if he was married—[the police officer] had an objectively reasonable basis to believe that an emergency require[d] that he provide immediate assistance to protect or preserve life, or to prevent serious injury.

The facts presented here are strikingly similar to those present in *Frankel.* Accordingly, we conclude that the emergency-aid exception to the warrant requirement justified the police officers' intrusion into defendant's home.

State v. Frankel, 179 NJ 586 (2004)
Brigham City v. Stewart, 547 US 398 (2006).
State v. Edmonds, 211 NJ 117 (2012)

1) - the officer had an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury; and

2) there is a 'reasonable nexus between the emergency and the area or places to be searched.

Third Party Intervention Doctrine

State v. Wright, 221 NJ 456 (2015)

Relying on the protections in the State Constitution, we conclude that the private search doctrine cannot apply to private dwellings. Absent exigency or some other exception to the warrant requirement, the police must get a warrant to enter a private home and conduct a search, even if a private actor has already searched the area and notified law enforcement.

To be sure, whenever residents invite someone into their home, they run the risk that the third party will reveal what they have seen to others.. A landlord, like any other guest, may tell the police about contraband he or she has observed. And the police, in turn, can use that information to apply for a search warrant. *Ibid.* But that course of events does not create an exception to the warrant requirement.

To hold otherwise would result in a sizeable exception to the warrant requirement and expand the private search doctrine beyond the minimal intrusion it originally sanctioned. It would also ignore the special status of the home under federal and state constitutional law and allow a more substantial invasion of privacy. In short, a private home is not like a package in transit.

We recognize that residents have a reduced expectation of privacy in their home whenever a landlord or guest enters the premises. But residents do not thereby forfeit an expectation of privacy as to the police. In other words, an invitation to a plumber, a dinner guest, or a landlord does not open the door to one's home to a warrantless search by a police officer.

See Burdeau v. McDowell, 256 US 465 (1921) – The protections of the Fourth Amendment apply only governmental action. Accord Walter v. US, 447 US 649 (1980).

Private search doctrine first announced in US v. Jacobsen, 466 US 109 (1984).

Residential Entry during an Investigative Detention

State v. Legette, 441 NJ Super. 1 (App. Div. 2015)

We agree an officer who has lawfully detained a suspect in an investigatory stop, like an officer who has lawfully arrested a subject, need not let the suspect out of his sight or presence during the detention. Rather, if the detained person seeks to obtain identification or other items from his residence, the officer may accompany the detainee to prevent escape or danger to the officer and others. Such monitoring is justified by the normal authority of an officer conducting a lawful *Terry* stop to take such steps as [are] reasonably necessary to protect [his and others'] personal safety and to maintain the status quo during the course of the stop.'

We recognize there are differences between a detention and an arrest. [T]he privacy rights of an individual who is placed under lawful arrest are diminished. Moreover, arrestees are more likely to want to retrieve items such as clothing or footwear because they are being taken to a police station. On the other hand, investigatory stops, like arrests, are "encounters with the police in which a person's freedom of movement is restricted, and the detainee may be subjected to the "invasion of privacy that occurs in a pat-down of a person's body. Moreover, detainees have not yet been searched and may not have been frisked. Thus, there is a greater risk that detainees, particularly un-frisked detainees, have on their persons weapons they could access, or contraband or evidence they could conceal or destroy, if left unaccompanied. A *Terry* stop involves a police investigation "at close range" ... when the officer remains particularly vulnerable in part *because* a full custodial arrest has not been effected.' By accompanying the detainee, the officer can better act "at the first indication that he was in danger, or that evidence might be destroyed, and better prevent [the detainee's] escape.

This Appellate Division decision is an extension of Washington v. Chrisman, 455 US 1 (1982), which authorized accompanying and monitoring an arrested person to a dorm room to retrieve ID.

Abandoned Property

State v. Randolph, 441 NJ Super. 533 (App. Div. 2015)

Establishing an abandonment of real property is 'a difficult standard to meet. Before the government may cross the threshold of a home without a warrant, there must be clear, unequivocal and unmistakable evidence that the property has been abandoned. The test is one of objective reasonableness, and turns on whether, given the totality of the circumstances, an objectively reasonable police officer would believe the property is abandoned. Because the officer's subjective beliefs are irrelevant to this inquiry, a police officer's sincere, good-faith but unreasonable belief that real property is abandoned will not justify a warrantless search when a defendant has an apparent possessory interest in that property.

In deciding whether a building is abandoned, or a person is a trespasser, one reasonable step an officer might take is to examine readily available records on ownership of property. Deeds are kept in the county recording office and provide the address of the property owner.

Moreover, utility records, which can be secured by a grand jury subpoena, will reveal not only the name of the property owner, but also whether electricity has been used in the premises. Such record checks are not the exclusive means of determining whether property is abandoned, but just one factor in assessing whether a police officer acted in an objectively reasonable manner.

Other factors to consider in assessing whether a building is abandoned are the property's condition and whether the putative owner or lessee has taken measures to secure the building from intruders. There are impoverished citizens who live in squalor and dilapidated housing, with interiors in disarray and in deplorable condition, and yet these residences are their homes. As succinctly stated, there is not a trashy house exception to the warrant requirement. Yet, a police officer may be familiar with an unoccupied building with missing doors and broken windows, and an interior in utter shambles and lacking electricity, and reasonably conclude that the structure is abandoned. The decrepit condition of the exterior and interior of a building is a factor, but other circumstances will necessarily come into play. For example the boarding of windows and bolting of doors of a shabby-looking building will suggest an intent to keep people out by a person exercising control over the property and therefore may be evidence that conflicts with abandonment. A Home is not deemed 'abandoned' merely because a person is dealing drugs from it.

Issues of abandonment affect both expectations of privacy and standing. See seminal cases - State v. Brown, 216 NJ 508 (2014); State v. Alston, 88 NJ 211 (1981) (Standing conferred if the defendant has a proprietary, possessory or participatory interest in either the place searched or the property seized); State v. Hempele, 120 NJ 182 (1990).