Garden State CLE
21 Winthrop Road • Lawrenceville, New Jersey 08648
(609) 895-0046 fax- 609-895-1899
Atty2starz@aol.com

Video Course Evaluation Form

Attorney Name_____

Atty ID number for Pennsylvania:_____

Name of Course You Just Watched_____

Please Circle the Appropriate Answer

Instructors:	Poor	Satisfactory	Good	Excellent
Materials:	Poor	Satisfactory	Good	Excellent
CLE Rating:	Poor	Satisfactory	Good	Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

_____

_____

_____

What criticisms, if any, do you have?

_____

_____

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

Arrest, Search & Seizure
Annual Review – 2009

Lesson Plan

Part I – Automobile Searches

Arizona v. Gant, 129 S. Ct. 1710 (2009)
Arizona v. Johnson, 129 S. Ct. 781 (2009) *
State v. Barrow, 408 N.J. Super 509 (App. Div. 2009)
State v. Amelio, 197 N.J. 207 (2008) *
State v. Woodruff, 403 N.J. Super. 620 (Law Div. 2009)
State v. Best, 403 N.J. Super. 428 (App. Div. 2008) *

Part II – Search Warrants

State v. Marshall, 199 N.J. 602 (2009) *
State v. Broom-Smith, 406 N.J. Super. 228 (App. Div. 2009)
State v. Pena-Flores, 198 N.J. 6 (2009) *

Part III – Residential Searches

State v. Fanelle, 404 N.J. Super 180 (Law Div. 2008) *
State v. Robinson, 200 N.J. 1 (2009) *
State v. Finesmith, 406 N.J. Super. 510 (App. Div. 2009)
State v. O'Donnell, 408 N.J. Super. 177 (App. Div. 2009)
State v. Bogan, 200 N.J. 61 (2009) *

Part IV- Miranda Warnings

State v. Nyhammer, 197 N.J. 383 (2009) *
Kansas v. Ventris, 129 S. Ct. 1841 (2009)
Montejo v. Louisana, 129 S. Ct. 2079 (2009) *
State v. Wessells, 408 N.J. Super. 188 (App. Div. 2009)
State in the Interest of P.M.P., 200 N.J. 166 (2009) *
State in the Interest of A.S., 409 N.J. Super. 99 (App. Div. 2009) *

Arrest, Search & Seizure
Annual Review – 2009

Lesson Plan

Part V– Electronically Stored Data
State v. Finesmith, 408 N.J. Super. 206 (App. Div. 2009)

Part VI – Standing
State v. Baum, 199 N.J. 407 (2009)

Part VII – Arrest
Herring v. United States, 129 U.S. 695 (2009)

Part VIII– Qualified Immunity
Pearson v. Callahan, 129 S. Ct. 808 (2009) *
Safford Unified School District v. Redding, 129 S. Ct. 2633 (2009) *

Arizona v. Gant, 129 S. Ct. 1710 (2009)

Accordingly, we reject this reading of *Belton* and hold that the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.

It is particularly significant that *Belton* searches authorize police officers to search not just the passenger compartment but every purse, briefcase, or other container within that space. A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment-the concern about giving police officers unbridled discretion to rummage at will among a person's private effects.

Under our view, *Belton* permits an officer to conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest. Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand.

Related Case: State v. Eckel, 185 N.J. 523 (2006)

Arizona v. Johnson, 129 S. Ct. 781 (2009)

A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.

In sum, a traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will. Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission. The officer surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her.

State v. Barrow, 408 N.J. Super 509 (AD 2009)

No person shall drive any vehicle so constructed, equipped or loaded as to unduly interfere with the driver's vision to the front and to the sides.

The State concedes that the first two paragraphs of the statute do not apply to items hanging from a rearview mirror. Accordingly, we need not address defendant's contentions regarding those paragraphs and the cases he cites interpreting paragraph two. However, the State posits that the officer had a reasonable basis for the stop because the third paragraph of *N.J.S.A.* 39:3-74 applies to the boxing gloves.

Defendant responds that the third paragraph only applies to a vehicle that is "constructed, equipped or loaded" with an offending item. Thus, because the boxing gloves are not part of the vehicle's construction, and do not represent the vehicle's equipment or load, defendant concludes that the officer lacked a reasonable articulable basis to believe that they violated the statute.

Defendant's argument lacks merit. The third paragraph of *N.J.S.A.* 39:3-74 applies to vehicles that are "constructed, equipped *or* loaded as to unduly interfere with the driver's vision to the front and to the sides." (Emphasis added.) Among other definitions, "loaded" is defined as "something carried or to be carried at one time or in one trip; burden; cargo [.]" *Webster's New World Dictionary,* 792 (3d ed. 1988). Accordingly, "loaded" applies to objects that are carried and placed in a vehicle, including items hung from a rearview mirror, such as the boxing gloves.

State v. Barrow, 408 N.J. Super 509 (App. Div. 2009)

The question then is whether the officer had a reasonable, articulable belief that the boxing gloves "unduly interfered" with the driver's vision.

The "unduly interfere" language of *N.J.S.A.* 39:3-74 falls within both the materially obstructs approach and the majority approach, both of which require the stopping officer to provide articulable facts showing that he or she reasonably believed that an object hanging from a rearview mirror obstructed the driver's view, thus violating the statute. Here, we are satisfied that Wittke's testimony about his observation of the hanging, swaying objects, and his testimony that the objects obstructed the driver's view, passes the reasonable and articulable test to provide the officer ample grounds to perceive that the "unduly interfere" requirement of *N.J.S.A.* 39:3-74 was violated.

We do not address whether sufficient proof beyond a reasonable doubt existed that the statute was, in fact, violated. That issue is not before us, given the driver's guilty plea. Our holding is confined to the constitutionality of the stop of the automobile in which defendant was a passenger.

State v. Amelio, 197 N.J. 207 (2008)

In some circumstances an informant's tip may assist the court in evaluating whether the police officer had reasonable suspicion to stop a person. That said, "[a]n anonymous tip, standing alone, is rarely sufficient to establish a reasonable articulable suspicion of criminal activity The anonymous informant's "veracity," "reliability" and "basis of knowledge" are "relevant in determining the value of his report

We have noted that "[a] report by a concerned citizen" or a known person is not "viewed with the same degree of suspicion that applies to a tip by a confidential informant" or an anonymous informant. That is, " '[d]ifferent considerations obtain ... when the informer is an ordinary citizen,' ("There is an assumption grounded in common experience that such a person is motivated by factors that are consistent with law enforcement goals.")];("[w]hen an informant is an ordinary citizen, New Jersey courts assume that the informant has sufficient veracity and require no further demonstration of reliability").

In a similar case, the police were told that an employee of the company had seen the defendant with a gun. The police located the defendant and patted him down. In finding that the police had lawfully executed a stop and frisk, Judge Handler quoted the Wisconsin Supreme Court for the principle that an ordinary citizen who reports a crime stands in a much different light than an informant because the ordinary citizen " 'acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety.' "

State v. Amelio, 197 N.J. 207 (2008)

Applying these principles to the present case, the officers properly relied on the seventeen-year-old daughter's report that her father was drunk. This was not an anonymous tip. Rather, this was a citizen who gave her name to the police when she first reported a verbal fight in the household, and then a short while later reported that her father, whom she said was drunk, was leaving the house driving his car. The seventeen-year-old was " 'in the nature of a victim or complainant, whose information could be taken at face value irrespective of other evidence concerning [her] reliability.'

Related cases: State v. Golotta, 178 N.J. 205 (2003)

State v. Woodruff, 403 N.J. Super. 620 (Law Div. 2009)

The court also rejects defendant's argument that, in any event, two departures from a lane do not suffice to establish a violation. The defense argued that conceivably, when a driver twice deviates from a lane, it "can be for an innocuous, harmless reason such as reaching for a tissue...." However, the number of lane departures is just one factor in determining whether a driver has adhered to a single lane as nearly as practicable.

The statute plainly does not make it a violation anytime a driver strays from a lane. If it is not practicable to maintain the lane, then a departure from lane is not a violation. The issue is, what is meant by the clause, "as nearly as practicable?" Considering the plain language of the statute, and the persuasive authority of other courts, this court finds that a driver must maintain a lane to the extent that a person may reasonably maintain the lane, given surrounding circumstances, such as road conditions, weather, vehicle condition, and vehicle size and lane width, and taking into account the skill that a reasonable driver, as opposed to a perfect driver, should have.

Applying these principles, the court finds that the officer had a reasonable and articulable suspicion of a violation of the failure-to-maintain-lane law. As noted above, in order to justify a stop, the State need not prove beyond a reasonable doubt that the defendant violated the statute. It need only prove a reasonable and articulable suspicion of a violation.

State v. Best, 403 N.J. Super. 428 (App. Div. 2008)

Consequently, we hold that school officials: 1) are not required to obtain a warrant before searching a student vehicle parked on school grounds and 2) may conduct such search whenever, under the totality of the circumstances, the search was justified at its inception and officials reasonably suspect that evidence of illegal activity will be found in the vehicle.

In so holding, we specifically reject defendant's argument that the search of his vehicle should be governed by the probable cause standard that attaches to a stop of an automobile and the search of its contents.

We emphasize, however, that our holding is limited to the facts presented here: a search of a student's vehicle on school grounds where school officials limit and control students' ability to park there. We leave for another day the more difficult question of the standards to be applied when the student's vehicle is parked on a public street rather than on school grounds, or, if parked on school grounds, when no advance permission to do so is required.

Related cases:

New Jersey v. T.L.O., 469 U.S. 325(1985);
Joye v. Hunterdon Cent. Reg'l. High Sch. Bd. of Educ., 176 N.J. 568 (2003)

State v. Marshall, 199 N.J. 602 (2009)

We reiterate that a neutral and detached magistrate must determine probable cause that contraband will be found at a particular location, or that an offense is being committed there. Because that did not occur here, the search warrant was deficient.

The State also asserts that, irrespective of any infirmities in the affidavit or warrant, suppression is not justified where the police follow the procedure approved by the trial court. The State urges that we not follow our rejection of the good-faith exception. In contrast, defendant argues that the particularity and probable cause requirements are inexorably intertwined and that the failure to comply with the particularity requirement is not a technical error.

In *State v. Valencia,* 93 *N.J.* 126 (1983), we addressed a similar argument by the State in the context of a telephonic warrant request in which the officer read his unsworn affidavit to a judge and was not placed under oath. We explained that "[c]ourts in this State consistently have maintained that strict adherence to the protective rules governing search warrants is an integral part of the constitutional armory safeguarding citizens from unreasonable searches and seizures." We concluded that the "deviations from the rules governing search warrants in the aggregate constitute material noncompliance with the rules governing search warrants."

State v. Marshall, 199 N.J. 602 (2009)

In short, the failure to comply with the particularity requirement and the failure to have a neutral magistrate or judge determine whether the conditions in the warrant were satisfied are constitutional violations. We do not view those violations as "technical insufficiencies or irregularities," *R.* 3:5-7(g), justifying overlooking the deficiencies in the warrant. "We serve the criminal justice system best by enforcing clear and uniform rules whenever appropriate under the circumstances."

State v. Broom-Smith, 406 N.J. Super. 228 (App. Div. 2009)

In this case, we need not address the outside parameters of either *N.J.S.A.* 2B:12-6 or *Rule* 1:12-3(a), for two reasons. First, we conclude that, as applied here, both provisions are broad enough to authorize a warrant application to the Berkeley Township municipal judge, who was available because that municipality's court was in session, on a day when the Dover Township municipal court was not in session and its judge would therefore not be readily available. Most warrant applications have an element of urgency, and most municipal judges sit part-time and have private law practices. When the local municipal judge's court is not in session, it makes practical sense to allow law enforcement officers to apply to another municipal judge in the county, whose court is then in session, rather than requiring them to track down an out-of-session municipal judge who may be appearing in court on behalf of a client or be otherwise engaged in the activities of private law practice.

Second, we conclude that even if there had been an error on the part of the investigator or the municipal judge due to an overly broad reading of the Assignment Judge's order, the error would be technical and would not vitiate the validity of the warrant. *See R.* 3:5-7(g) In that connection, we note that our courts have been reluctant to invalidate search warrants based on confusion over jurisdiction or other issues that do not implicate probable cause or the neutrality of the issuing judge.

State v. Pena-Flores, 198 N.J. 6 (2009)

[T]here is a suggestion in our case law that a search pursuant to a telephonic warrant should be treated, analytically, as a warrantless search. As a result, it may be that resort to such warrants has been inhibited. It makes sense that if a telephonic warrant is treated as the equivalent of no warrant at all, police would generally see no benefit in the procedure. Moreover, our Court Rules have underscored the problem by requiring an applicant for a telephonic warrant to prove to the judge "that exigent circumstances exist sufficient to excuse the failure to obtain a written warrant." *R.* 3:5-3(b). By that requirement, which replicates the justification necessary to uphold a warrantless search, the telephonic or electronic warrant maintains its place in the hierarchy as a second-class citizen.

It seems to us that our procedures for seeking a warrant would be improved by recognizing what other jurisdictions have long acknowledged-that a warrant obtained by telephonic or electronic means is the analytical equivalent of an in-person warrant and should be treated accordingly.

[W]e will amend *R.* 3:5-3(b) to clarify the parity between the various methods for obtaining a warrant and to underscore that an officer may resort to electronic or telephonic means without the need to prove exigency.

State v. Pena-Flores, 198 N.J. 6 (2009)

In addition, we will establish a Task Force, including representatives of the Attorney General, the Prosecutors, the Public Defender, the defense bar, and the judiciary, to address the practical issues involved in obtaining telephonic and electronic warrants. The Task Force will study the telephonic and electronic warrant procedures and make practical suggestions to ensure that technology becomes a vibrant part of our process. That will include recommendations for uniform procedures (including forms), equipment, and training, along with an evaluation of the scheme once it is underway.

For example, the State argues that, in reality, obtaining such a warrant is a difficult and time-consuming effort, in the main because judges are not always instantly available. There may be problems in developing an effective scheme to obtain warrants electronically or telephonically, but quick access to a judge should not be one of them.
We should give police access to an efficient and speedy electronic and telephonic warrant procedure that will be available to them on the scene; that will obviate the need for difficult exigency assessments; and that will guarantee our citizens the protections that the warrant requirement affords-an evaluation of probable cause by a neutral judicial officer.

Finally, we note that the enhanced availability of electronic and telephonic warrants is not intended to supplant the traditional exceptions to the warrant requirement. We continue to recognize the right of officers to search a motor vehicle without a warrant where probable cause and exigent circumstances coexist.

State v. Fanelle, 404 N.J. Super 180 (Law Div. 2008)

Thus, this court must determine whether the police have carried their burden of proving that, having been authorized to enter defendant's home before sunrise without knocking and announcing their presence, it was reasonable under the circumstances to deploy at least two flash-bang devices. In order to do so, the court relies on such facts as it is able to find based on the record at the remand hearing, recognizing that in many instances either the affiant, the State Police, or both, may not have been aware of those facts. Nevertheless, and without attributing ill motive to any officer, the court finds that, in its evaluation of the reasonableness of the conduct of the police, they must be held responsible for knowledge of any facts that were available to any of them with the exercise of due diligence.

[T]he court is constrained to conclude that the deployment by the police of at least two grenades under commando-raid-like conditions, based in part on information that was incorrect or incomplete, and otherwise on willful ignorance of relevant facts that were readily available, was, under the totality of the circumstances, unreasonable. Therefore, the evidence seized from defendant's home must be suppressed.

Related Cases:

State v. Fanelle, 385 N.J. Super. 518 (App. Div. 2006)

State v. Robinson, 200 N.J. 1 (2009)

State v. Robinson, 200 N.J. 1 (2009)

In the calculus of reasonableness, "the time lapse [preceding forced entry need not be] extensive in length, depending on the circumstances of a given case." "[T]his standard is 'necessarily vague,' and turns on the circumstances existing when the police execute the warrant.". The facts relevant to that determination are circumscribed, as "the facts known to the police are what count in judging reasonable waiting time Hence, "the crucial fact in examining [law enforcement's] actions is not time to reach the door but the particular exigency claimed. Particularly in narcotics cases, reasonableness in delay is not a function of merely "how long it would take the resident to reach the door, but how long it would take to dispose of the suspected drugs. That consideration is fully part and parcel of New Jersey's jurisprudence. ("In respect of the destructibility of heroin and cocaine, we take judicial notice of the fact that small quantities of narcotics sold out of a person's home are almost always susceptible to destruction or disposal.

There are common factors to be applied in determining the reasonableness of the delay between knocking and announcing and a forcible entry. They include, but need not be limited to: a suspect's violent criminal history,; an informant's tip that weapons will be present, the risks to officers' lives and safety; the size or layout of defendant's property, whether persons other than defendant reside there, whether others involved in the crime are expected to be present and the time of day.

Related case: State v. Johnson, 168 N.J. 608 (2001)

State v. Finesmith, 406 N.J. Super. 510 (App. Div. 2009)

Our courts have not previously had occasion to consider whether a single search warrant may provide authorization for the executing officers to make more than one entry into the premises identified in the warrant if they are unable to locate an item of evidence specified in the warrant during their initial entry. However, the federal courts have adopted what is commonly referred to as the "reasonable continuation doctrine" under which police may in some circumstances temporarily suspend a search authorized by a warrant and re-enter the premises at a later time to continue the search.

In order for a re-entry into premises to be considered a reasonable continuation of the search authorized by the warrant, two conditions must be satisfied: first, "the subsequent entry must ... be a continuation of the original search, rather than a new and separate search," and second, "the decision to conduct a second entry to continue the search must be reasonable under the totality of the circumstances.

State v. O'Donnell, 408 N.J. Super. 177 (App. Div. 2009)

[W]hen a law enforcement officer enters private premises in response to a call for help, and during the course of responding to the emergency observes but does not take into custody evidence in plain view, a subsequent entry shortly thereafter, by detectives whose duty it is to process evidence, constitutes a mere continuation of the original entry.... This conclusion ... furthers the goal of effective law enforcement, and promotes the rationale and purpose of the plain view doctrine.

State v. Bogan, 200 N.J. 61 (2009)

The community caretaking role of the police also extends to protecting the welfare of children. Indeed, that community caretaking responsibility is a reflection of the State's general *parens patriae* duty to safeguard children from harm. ("New Jersey's *parens patriae* obligation to protect and promote the welfare of children extends to all children resident in this State. The State's *parens patriae* power "derives from the inherent equitable authority of the sovereign to protect those persons within the state who cannot protect themselves."

It is well-recognized that leaving children unattended may constitute a significant threat to their safety and welfare. So, for example, in one case, police officers who received credible information that two children had been left alone in a motel known to be a haven for prostitution were justified in entering a motel room without a warrant "for the purpose of ascertaining the whereabouts and condition of the children." . Although the court found the warrantless entry to be permissible under the emergency aid doctrine, the court equally could have justified the actions of the police under the community caretaking doctrine, ("A danger that children ... may obtain access to a gun is one circumstance which may justify the police entering private property in the performance of their community caretaking responsibilities."),

State v. Nyhammer, 197 N.J. 383 (2009)

The crux of this case is whether defendant knowingly, voluntarily, and intelligently waived his right against self-incrimination when he confessed to sexually abusing Amanda. Defendant contends that his confession should be deemed involuntary because, in addition to giving the *Miranda* warnings, the police must inform a person, at the outset of any questioning, that he is a suspect (if indeed he is a suspect) or read again the *Miranda* warnings after questioning begins when he becomes a suspect. Here, Detective Sperry informed defendant of his *Miranda* rights, but not that he was a suspect when the questioning began, and did not repeat the *Miranda* warnings when the questioning focused on defendant's sexual abuse of Amanda.

Generally, barring intervening events, "[o]nce a defendant has been [advised] of his constitutional rights, no repetition of these rights is required."

In determining the voluntariness of a defendant's confession, we traditionally look to the totality of the circumstances to assess whether the waiver of rights was the product of a free will or police coercion. In the totality-of-the-circumstances analysis, we consider such factors as the defendant's "age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved

State v. Nyhammer, 197 N.J. 383 (2009)

Significantly, we are not aware of any case in any jurisdiction that commands that a person be informed of his suspect status in addition to his *Miranda* warnings or that requires automatic suppression of a statement in the absence of a suspect warning. The essential purpose of *Miranda* is to empower a person-subject to custodial interrogation within a police-dominated atmosphere-with knowledge of his basic constitutional rights so that he can exercise, according to his free will, the right against self-incrimination or waive that right and answer questions The defining event triggering the need to give *Miranda* warnings is custody, not police suspicions concerning an individual's possible role in a crime.

Kansas v. Ventris, 129 S. Ct. 1841 (2009)

This case does not involve, therefore, the prevention of a constitutional violation, but rather the scope of the remedy for a violation that has already occurred. Our precedents make clear that the game of excluding tainted evidence for impeachment purposes is not worth the candle. The interests safeguarded by such exclusion are "outweighed by the need to prevent perjury and to assure the integrity of the trial process." "It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can ... provide himself with a shield against contradiction of his untruths Once the defendant testifies in a way that contradicts prior statements, denying the prosecution use of "the traditional truth-testing devices of the adversary process," is a high price to pay for vindication of the right to counsel at the prior stage.

Montejo v. Louisana, 129 S. Ct. 2079 (2009)

These three layers of prophylaxis are sufficient. Under the *Miranda*- *Edwards*- *Minnick* line of cases (which is not in doubt), a defendant who does not want to speak to the police without counsel present need only say as much when he is first approached and given the *Miranda* warnings. At that point, not only must the immediate contact end, but "badgering" by later requests is prohibited. If that regime suffices to protect the integrity of "a suspect's voluntary choice not to speak outside his lawyer's presence" before his arraignment, it is hard to see why it would not also suffice to protect that same choice after arraignment, when Sixth Amendment rights have attached. And if so, then *Jackson* is simply superfluous.

State v. Wessells, 408 N.J. Super. 188 (App. Div. 2009)

Here, we are strongly persuaded by the soundness of the reasoning at the core of these federal and state decisions, which has been summarized as follows:

"Once released, the suspect is no longer under the 'inherently compelling pressures' of continuous custody where there is a reasonable possibility of wearing433 the suspect down by badgering police tactics to the point the suspect would waive the previously invoked right to counsel. A break in custody between the first and second interrogations also provides the suspect the opportunity to speak with an attorney, family member or any person the suspect cares to consult without police constraints." We therefore adopt the premise that "a ... break in custody where the defendant has a reasonable opportunity to contact his attorney [while free of custodial pressures] dissolves an *Edwards* ... claim.' "**

Thus, in New Jersey, a person who has asserted the right to counsel during a police custodial interrogation and is subsequently released may be interrogated again if the break in custody afforded a reasonable opportunity to consult an attorney. Moreover, in order to determine whether the break in custody is sufficient to defeat *Edwards* protection, we adopt a totality-of-the-circumstances test[.]

State in the Interest of P.M.P., 200 N.J. 166 (2009)

We find no need to tackle that constitutional question because we are convinced that the Legislature has provided a statutory remedy. Under the Code, a juvenile is entitled to have "counsel at every critical stage of the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile." *N.J.S.A.* 2A:4A-39a. Thus, the question is whether the filing of the juvenile complaint by the Prosecutor's Office, followed by the issuance of a judicially approved arrest warrant, constitutes a "critical stage" such that the statutory right to counsel is implicated.

A juvenile delinquency complaint may be filed by anyone, but when a crime is alleged in the complaint, the prosecutor's consent is needed before the court may divert the complaint. *R.* 5:20-1(c). Thus, the prosecutor plays a heightened role when it is alleged that the juvenile committed conduct that, if committed by an adult, would be a crime. Indeed, when the Prosecutor's Office files a juvenile complaint, it already has determined that it has a prima facie case against the defendant. Consequently, because the juvenile does not have the right to indictment, the filing of the complaint by the Prosecutor's Office takes on added significance. At that point, the prosecutor's role has evolved from investigative to accusatory.

State in the Interest of P.M.P., 200 N.J. 166 (2009)

In the present case, the Prosecutor's Office investigated the victim's complaint, and based on its investigation, filed the juvenile complaint and sought an arrest warrant. The State had developed a prima facie case against defendant and was clearly an adversary to defendant. Certainly, any further questioning of defendant was for the purpose of buttressing the State's case against him. We conclude that under those circumstances, the significant level of involvement by the Prosecutor's Office and the judicially approved arrest warrant satisfied the "critical stage in the proceeding" necessary to trigger defendant's statutory right to counsel under *N.J.S.A. 2A:4A-39*.

Related Cases:

Defendant not informed by police that an attorney was present and waiting to speak to him. - State vs. Reed, 133 N.J. 237(1993)
*** Defendant not informed by police prior to interrogation that there is an active bench warrant for his arrest. - State vs. A.G.D., 178 N.J. 56(2003)**
*** Police fabricate physical evidence to trick defendant into confessing. State v. Patton, 362 N.J. Super. 16 (A.D. 2003)**
*** Parent or attorney absent from interview of juvenile suspect under the age of 14. - State v. Presha, 163 N.J. 304 (2000).**
*** Police initiated interview of defendant following return of an indictment. – State v. Sanchez, 129 N.J. 261 (1992)**

State in the Interest of A.S., 409 N.J. Super. 99 (App. Div. 2009)

In reaching this conclusion, we are mindful of A.S.'s youth, her relatively low intelligence, and her unfamiliarity with the criminal justice system. We also note the cursory nature of the administration of A.S.'s rights, the lack of meaningful consultation, the inadequacy of the explanation given to her regarding the role of an attorney in protecting her rights, and the significant possibility that she ambiguously invoked her right to remain silent. But of overwhelming significance to us is F.D.'s patent conflict of interest in advising A.S., arising from her relationship to the victim, her grandson C.J., and her evident determination to protect the interests of C.J. at the expense of those of A.S. Indeed, in the absence of the other enumerated factors, we would still be inclined to find suppression warranted in this matter.

In circumstances such as those existing in the present matter, where the adult advisor is known to have a close family relationship to both the victim and the alleged perpetrator, the prudent approach would be to require the presence of an attorney capable of advising the juvenile with respect to her rights and her potential culpability, a procedure adopted elsewhere.

State v. Finesmith, 408 N.J. Super. 206 (App. Div. 2009)

Under the New Jersey Wiretapping and Electronic Surveillance Control Act, a CDW is different from a wiretap order in both the nature of the communication to which it is addressed and the standard for its issuance. A wiretap order permits the interception by law enforcement of a communication contemporaneous with the transmission while a CDW is directed to acquisition of communications in post-transmission electronic storage kept by an electronic communication service or remote computing service for reasons of backup protection for the communication. By definition, an electronic communication in storage cannot be "intercepted" because it is not contemporaneous with the transmission.

As a result, a CDW is not subject to the more restrictive procedures and enhanced protections of the Wiretap Act, which include a showing of necessity because normal investigative procedures have failed, *N.J.S.A.* 2A:156A-10. By contrast, N.J.S.A. 156A-29(a) requires only that a law enforcement agency obtain a warrant upon a showing of probable cause.

In granting the CDW, the trial judge properly determined that the State satisfied the probable cause standard and issued the warrant. However, the court's restriction of the CDW to the two-week timeframe was arbitrary since no reason was given for the limitation other than labeling the State's request "excessive" without any basis in the record to substantiate that conclusion.

State v. Finesmith, 408 N.J. Super. 206 (App. Div. 2009)

Because the State seeks to show a pattern of use of defendant's DocISP account, a longer period than two weeks is appropriate for the State's investigation into the identification of the person who downloaded child pornography onto the laptop computer. We find no grounds to deny the State's requested period of one year as a reasonable timeframe for its investigation.

State v. Baum, 199 N.J. 407 (2009)

As to the narrow issue before this Court, however, an analysis of our own protection against self-incrimination yields the same conclusion as that

announced by the courts that have interpreted the Fifth Amendment. As with the *Miranda* warnings, the purpose advanced by our statute and rule is to protect the individual's right against self-incrimination rather than to advance the goals of another who tries to claim the benefit of that purely personal right. Were we to part company with the federal courts on this issue and allow defendant to vicariously assert Baum's right against self-incrimination, we would adopt an approach that would, in effect, read *Miranda* in a manner so inconsistent with the clear guidance of our federal counterparts as to be inappropriate. As we have recognized, the United States Supreme Court "has advised against extending *Miranda* unless the holding 'is in harmony with Miranda's underlying principles.'

We see no basis in this record on which to expand the protections against self-incrimination so as to permit a third party, such as defendant, to assert a violation vicariously. Therefore, we conclude that, to the extent that defendant's suppression motion was based on a claimed violation of Baum's right against self-incrimination, it should have been denied.

Herring v. United States, 129 U.S. 695 (2009)

To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can

meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level.

Related cases:

State v. Novembrino, 105 N.J. 95, 519 A.2d 820 (1987).

State v. Moore, 260 N.J.Super. 12, 614 A.2d 1360 (App. Div. 1992).

Pearson v. Callahan, 129 S. Ct. 808 (2009)

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly

established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity balances two important interests-the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact."

Because qualified immunity is "an immunity from suit rather than a mere defense to liability ... it is effectively lost if a case is erroneously permitted to go to trial." Indeed, we have made clear that the "driving force" behind creation of the qualified immunity doctrine was a desire to ensure that " 'insubstantial claims' against government officials [will] be resolved prior to discovery. Accordingly, "we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation."

Pearson v. Callahan, 129 S. Ct. 808 (2009)

In *Saucier,* this Court mandated a two-step sequence for resolving government officials' qualified

immunity claims. First, a court must decide whether the facts that a plaintiff has alleged make out a violation of a constitutional right. Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was "clearly established" at the time of defendant's alleged misconduct. Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right.

Turning to the conduct of the officers here, we hold that petitioners are entitled to qualified immunity because the entry did not violate clearly established law. An officer conducting a search is entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment

Safford Unified School District v. Redding, 129 S. Ct. 2633 (2009)

In sum, what was missing from the suspected facts that pointed to [the child] was any indication of

danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. Parents are known to overreact to protect their children from danger, and a school official with responsibility for safety may tend to do the same. The difference is that the Fourth Amendment places limits on the official, even with the high degree of deference that courts must pay to the educator's professional judgment.

We do mean, though, to make it clear that the *T.L.O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions