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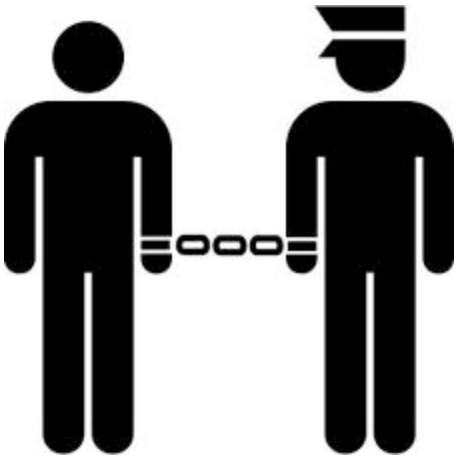

New Jersey Arrest, Search & Seizure Review - 2011

Lesson Plan

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2.) South Dakota v. Opperman, 428 US 364 (1976)

(Impoundment & Inventory Search of motor vehicles)

I. Community Caretaking Exception

Motor Vehicles - Background

1.) State v. Goetaski, 209 N.J. Super. 362 (App. Div. 1986) (Shoulder rider)

2.) State v. Martinez, 260 NJ Super. 75, 78 (App. Div. 1992)

(a) something might be wrong with the car;

(b) something might be wrong with its driver

(c) a traffic safety hazard is presented to drivers approaching from the rear when an abnormally slow moving vehicle is operated at night on a roadway without flashers;

(d) there is some risk that the residential neighborhood is being "cased" for targets of opportunity. (common law right of inquiry)

3.) State v. Washington, 296 NJ Super. 569 (App. Div. 1997) (Abnormal operation forms a basis to effect a stop judged on totality of the circumstances).

4.) State v. Diloreto, 180 N.J. 264 (2004)

I. Community Caretaking Exception

Motor Vehicles - Latest Case

State v. Adubato, 420 NJ Super. 167 (App. Div. 2011)

Consequently, [the officer] did not know whether he was dealing with an intoxicated driver, a lost driver, someone with car trouble, or, as the Law Division judge suggested, someone who was looking around the neighborhood for opportunities to engage in criminal conduct. Under those circumstances, we conclude that [the officer] was justified in making further inquiry, whether one views the situation as [a field inquiry] or under the "community caretaking" concepts articulated in *Martinez.*

I. Community Caretaking Exception

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I. Community Caretaking Exception

Residences – Latest Cases

State v. Witczak, 421 N.J.Super. 180, 196-97 (App. Div. 2011) (Old Lady & the Gun Case)

From the decisions of our Supreme Court regarding the community caretaker exception in the home context, we extrapolate the following themes. First, the analysis employs an objective reasonableness standard, which is the touchstone of the Fourth Amendment. Second, for the exception to apply, the police must act to fulfill a genuine community caretaker responsibility. And third, there must be evidence of some form of exigency that compels the police to ensure the safety and wellbeing of the citizenry at large. In short, it must be determined whether the police were motivated by giving assistance or by investigating a crime in their initial entry into the home.

Here, we find the facts to be insufficient to establish as objectively reasonable the claimed exercise of the police caretaking function. [The officer] arrested defendant and entered the home to retrieve the gun. When the officer walked into the home, it was surrounded by up to eight officers, defendant was in custody, the victim was safe two blocks away, and defendant's bedridden mother was three floors away from the location of the gun. [The police officer] did not enter the home to ensure the safety and welfare of the bedridden woman. Even though the officer knew that defendant's mother was in the house, he did not speak to her. Once defendant was in custody and the victim was safely secured, there no longer existed any emergency. Under these facts, we are unable to say that the purported "community caretaker responsibility [was] a real one, and not a pretext to conduct an otherwise unlawful warrantless search."

I. Community Caretaking Exception

Residences - Latest Cases

State v. Kaltner, 420 N.J.Super. 524, 544 (App. Div. 2011) (The 'Animal House' Case)

Governed thusly by the reasonableness standard, and weighing all of its component competing interests, we conclude that the police action in this instance was not constitutionally permitted. Although police entry into the dwelling was initially justified, their subsequent action in fanning out and conducting, in essence, a full-blown search of the home was neither reasonably related in scope to the circumstances that justified the entry in the first place nor carried out in a manner consistent with the factors supporting the entry's initial legitimacy. Indeed, the objective of noise abatement could have been achieved well short of the full-scale search engaged in by the officers in this matter.

II. Residential entry based on exigent circumstances

Background

State v. LaBoo, 396 NJ Super. 97 (App. Div. 2007)

The existence of probable cause and exigent circumstances trumps the right of privacy and the requirement of a search warrant. However, 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.

Exigency must not have been the creation of the police and used as a pretext…….

Unless it arose as a result of reasonable police investigative conduct. See:

State v. Stanton, 265 NJ Super. 383 (App. Div. 1993)

State v. Hutchins, 116 NJ 457 (1989)

II. Residential entry based on exigent circumstances

Latest Case

United State Supreme Court

Kentucky v. King, 131 S. Ct. 1849, 1857-58 (2011)

Despite the welter of tests devised by the lower courts, the answer to the question presented in this case follows directly and clearly from the principle that permits warrantless searches in the first place. As previously noted, warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement. Therefore, the answer to the question before us is that the exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable in the same sense. Where, as here, the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.

III. Miranda Issues

Question First – Warn Later – Background

State v. O'Neil, 193 NJ 148 (2007)

(1) [T]he extent of questioning and the nature of any admissions made by defendant before being informed of his *Miranda* rights;

(2) the proximity in time and place between the pre- and post-warning questioning;

(3) whether the same law enforcement officers conducted both the unwarned and warned interrogations;

(4) whether the officers informed defendant that his pre-warning statements could not be used against him; and

(5) the degree to which the post-warning questioning is a continuation of the pre-warning questioning.

III. Miranda Issues

Question First – Warn Later – Latest Case

New Jersey Supreme Court

State v. Yohnnson, 204 NJ 43 (2010)
(The cigarette break case)

Applying our ordinary totality of the circumstances test, we conclude that defendant's confession was knowing, voluntary, and intelligent. We do so because the trial court's findings of fact and credibility determinations are supported by ample evidence in the record and because the appellate panel's contrary conclusions are not. The trial court's credibility findings were based upon specific references to objective evidence that demonstrated that defendant's factual assertions were false and by the court's determination that the testimony of the detectives was believable. To hold otherwise, in light of the careful and comprehensive explanations given by the trial court, would turn *Locurto* on its head.

III. Miranda Issues

Ambiguous Requests for Counsel - Background

Edwards v. Arizona, 451 US 477 (1981) - Once a defendant requests counsel, an interrogation may not continue until counsel has been provided or the suspect initiates communication with the police evidencing an intention to waive his right to counsel.

Davis v. US, 512 US 452 (1994) - "Threshold standard of clarity" approach, pursuant to which the Fifth Amendment only requires police to stop questioning if the suspect makes a request for counsel that is unambiguous or unequivocal.

State v. Reed, 133 NJ 237 (1993) - A suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel. And when there is an objectively reasonable question about whether the suspect is invoking his right to remain silent or requesting counsel, the police are expected to ask questions of the suspect to clarify the issue.

III. Miranda Issues

Ambiguous Requests for Counsel – Latest Case

State v. Alston, 204 NJ 614, 627-28 (2011)

Nevertheless, this record, and in particular the inflections and tone revealed by the audio tape recording, demonstrate that defendant's statements to the police were not ambiguous assertions of his right to counsel. Instead, they were requests for advice from the police, followed by a hypothetical query about the mechanics relating to accessing counsel if he chose to assert a right he plainly knew was within his power to assert. Although in responding to defendant's query about the mechanics of securing counsel, re-reading the portion of the *Miranda* warnings about the appointment of counsel might have been the more prudent course, on balance, we conclude that the detective's response was a fair recitation of the right to counsel and the right to have the interrogation cease. More to the point, because the detective was not obligated to give defendant advice about whether he should assert any of his rights, we cannot fault his choice of words as he sought to clarify defendant's requests while avoiding giving him the advice he was seeking.

[Note the impact of State v. Cook, 179 NJ 533 (2004) requiring recording of statements.]

III. Miranda Issues

Age as a factor in voluntariness of a confession- Background

State v. Presha, 163 NJ 304 (2000)

It has long been the law in New Jersey that the age of a juvenile suspect is a factor to be considered by a reviewing court in gauging the voluntariness of a confession under the totality of the circumstances. Indeed, for a child under the age of 14, an intelligent review a waiver based upon of the totality of the circumstances is deemed impossible in the absence of a parent or other adult adviser.

[Interestingly, however, unlike the New Jersey courts, prior to 2011, SCOTUS had never specifically considered whether the age of juvenile suspect plays a part in determining the voluntariness of a confession. That issue has now been settled with the publication of J.D.B. v. North Carolina.]

III. Miranda Issues

Age as a factor in voluntariness of a confession- Latest Case

J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011)

So long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of the totality of the circumstances test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case. It is, however, a reality that courts cannot simply ignore.

III. Miranda Issues

Preservation of investigative notes - Latest Case

State v. W.B., 205 NJ 588 (2011)

Our criminal discovery rules do not currently require the recordation of all statements of witnesses obtained by law enforcement officers. But they do provide for discovery of all statements whether signed or unsigned, of witnesses as well as police reports which are "in the possession, custody and control of the prosecutor." Therefore, we hold today that the *Rule* encompasses the writings of any police officer under the prosecutor's supervision as the chief law enforcement officer of the county.

Logically, because an officer's notes may be of aid to the defense, the time has come to join other states that require the imposition of "an appropriate sanction" whenever an officer's written notes are not preserved. That said, we defer the implementation of this retention and disclosure requirement for thirty days in order to allow prosecutors sufficient time to educate police officers accordingly. Contemporaneously, we refer the matter to the Criminal Practice Committee for any necessary clarification of the *Rules.* In any event, starting thirty days from today, if notes of a law enforcement officer are lost or destroyed before trial, a defendant, upon request, may be entitled to an adverse inference charge molded, after conference with counsel, to the facts of the case.

IV. Expectation of Privacy

Cell Phone Tracking - Background

State v. LaBoo, 396 NJ Super. 97 (App. Div. 2007). (Use of CDW to track cell phone movements to a residence)

US v. Knotts, 460 US 276 (1983) A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. The court reasoned that the movements of the defendants' cars that eventually led the police to defendant's cabin could have been tracked through visual surveillance on public roads and that the "enhancement" of natural, visual surveillance capabilities with the use of "science and technology" did not raise a Fourth Amendment problem.

US v. Karo, 468 US 705 (1984) The use of a beeper or other electronic tracking device for surveillance of a suspect's or contraband's movements along highways or in other public places does not violate the Fourth Amendment.

IV. Expectation of Privacy

Cell Phone Tracking – Latest Case

State v. Earls, 420 NJ Super. 583 (App. Div. 2011)

[T]he use by the police of information obtained from T–Mobile concerning defendant's general location, derived from signals emitted by his cell phone, which together with visual surveillance resulted in discovery of his car in a motel parking lot, did not violate any legitimate expectation of privacy defendant may have had regarding the location of his car. As in *Knotts,* [w]hen [defendant] traveled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction ... and the fact of his final destination at the motel, and [n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them.

[New Jersey] courts have long recognized that the driver of an automobile does not have a constitutionally protected right of privacy in the movements of his car on public roadways. Our courts have also recognized that police officers may utilize modern technology in conducting surveillance of public places and private property that is not subject to constitutional protection. Our Supreme Court has construed the New Jersey Constitution to provide more extensive search and seizure protections than the Fourth Amendment only when a person has a reasonable expectation of privacy in particular information. We conclude for all the reasons previously set forth that a person has no reasonable expectation of privacy in their movements on public highways or the general location of their cell phone, and therefore, there is no basis in this context for construing the New Jersey Constitution more expansively than the Fourth Amendment.

V. Arrest Warrants

Defective Arrest Warrant – Background

Herring v. US, 555 US 135 (2009) - When police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

The fact that a search or arrest was unreasonable does not necessarily mean that the exclusionary rule applies. The rule is not an individual right and applies only where its deterrent effect outweighs the substantial cost of letting guilty and possibly dangerous defendants go free

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. The pertinent analysis is objective, not an inquiry into the arresting officers' subjective awareness.

V. Arrest Warrants

Defective Arrest Warrant – Latest Cases

State v. Handy, 206 NJ 39 (2011)

[S]uppressing the evidence garnered from this illegal search would have important deterrent value, would underscore the need for training of officers and dispatchers to focus on detail, and would serve to assure that our own constitutional guarantees are given full effect. As the Appellate Division pointed out:

The police dispatcher is the crucial link between the officer in the field and police headquarters. The officer depends on receiving the correct information from the dispatcher, information such as whether there is or is not an outstanding arrest warrant for the person with whom the officer is then face to face. Misinformation either way has the potential to leave the officer either unaware that he or she is dealing with a dangerous criminal or arresting the wrong person.

The need to avoid the former is obvious and clearly in the best interest of the police officer in the field, the need to avoid the latter finds its basis in the Fourth Amendment's protection of "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *See also* *N.J. Const.* art. I, ¶ 7. The police officer in the field and the citizen on the street both benefit from a police dispatch system that is free of unreasonable conduct by dispatchers who fail to ensure that they are providing the available information about outstanding warrants as accurately and completely as possible.

V. Arrest Warrants

Defective Arrest Warrant – Latest Cases

State v. Brown, 205 NJ 133 (2011)

Because the police had probable cause to arrest Brown in public (1) for armed robbery committed outside their presence, and (2) for his behavior in resisting arrest, which they observed, they did not need an arrest warrant. As a result, the admittedly defective warrants the police possessed—which were tantamount to no warrants at all under the circumstances and rendered this a warrantless arrest do not affect the outcome here.

To be sure, we do not sanction certain conduct by the police in this case. They presented robbery complaints that contain no evidence of probable cause specifically as to Brown; they acted on invalid arrest warrants that were neither reviewed nor signed by a detached court officer before they made an arrest; and they did not obtain a search warrant to arrest Brown in the home of a third party. Better police training would address some of those issues. Likewise, enhanced training of court officers who review complaints for probable cause might be warranted, which we call to the attention of the Director of the Administrative Office of the Courts. However, because Brown chose not to stand his ground in his girlfriend's apartment and submit to a warrantless arrest, and instead fled and engaged in a public standoff, the above issues do not surface in the final analysis of this case.

V. Arrest Warrants

Materials Witnesses – Background

State v. Misik, 238 NJ Super. 367 (Law Div. 1989)

NJSA 2C:104-2

The Attorney General, county prosecutor or defendant in a criminal action may apply to a judge of the Superior Court for an order compelling a person to appear at a material witness hearing, if there is probable cause to believe that: (1) the person has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime or a criminal investigation before a grand jury and (2) the person is unlikely to respond to a subpoena. The application may be accompanied by an application for an arrest warrant when there is probable cause to believe that the person will not appear at the material witness hearing unless arrested.

NJSA 2C:104-4

If there is clear and convincing evidence that the person named in the application will not be available as a witness unless immediately arrested, the judge may issue an arrest warrant. The arrest warrant shall require that the person be brought before the court immediately after arrest. If the arrest does not take place during regular court hours, the person shall be brought to the emergency-duty Superior Court judge.

V. Arrest Warrants

Materials Witnesses – Latest Case

Ashcroft v. al-Kidd, 131 S. Ct. 2074 (2011)

Qualified immunity shields a government official from money damages unless (1) the official violated a statutory or constitutional right, and (2) that right was "clearly established" at the time of the challenged conduct

The objectively reasonable arrest and detention of a material witness pursuant to a validly obtained warrant cannot be challenged as unconstitutional on the basis of allegations that the arresting authority had an improper motive.

V. Search Warrants

Damages to Property during Execution – Background

Dalia v. United States, 441 U.S. 238(1979)

The manner in which a no-knock warrant is executed is reviewed under the "general touchstone of reasonableness which governs Fourth Amendment analysis. Officers executing search warrants on occasion must damage property in order to perform their duty. However, "[e]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search are not subject to suppression."

Gurski v. N.J. State Police Dep't, 242 N.J.Super. 148 (App.Div.1990).

"[P]olice officers may incur liability under Section 1983 if they execute a search warrant in an unreasonable manner." A "police officer's conduct 'in executing a search warrant is always subject to judicial review as to its reasonableness.' " "[I]t is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant ... subject of course to the general Fourth Amendment protection 'against unreasonable searches and seizures.'

V. Search Warrants

Damages to Property during Execution – Latest Case

Simmons v. Loose, 418 NJ Super. 206 (App. Div. 2011)

The investigating officer obtained a valid no-knock warrant based on an extensive affidavit setting forth particularized reasons for the warrant provision, and cannot be found liable for the alleged "wanton and malicious" damage allegedly caused by the State Police during execution of the warrant—damage plaintiffs alleged was in excess of what would be reasonably expected during such an execution.

Furthermore, even if the officer could be held liable for the acts of the State Police, there is no evidence that the State Police executed the warrant in an unreasonable manner. Here, the damage inflicted, particularly the damage to the exterior and interior doors, which was estimated to cost $3,200 out of the total of $4,312.16, was entirely consistent with a reasonable execution of a no-knock warrant.

We distinguish this case from [Gurski],where we concluded that the State Police had acted unreasonably in executing the warrant. In *Gurski,* the police destroyed the plaintiff's personal property, used the telephone without permission, "frolicked" on the lawn, "dry" fired weapons, used abusive language, directed sarcastic comments at the plaintiff's wife and frightened his wife and children.

V. Search Warrants

Search by Visiting Officers – Latest Case

State v. Nguyen, 419 NJ Super. 413 (App. Div. 2011)

Consistent with this view, our courts have held that evidence obtained by a police officer in a search conducted outside the boundaries of the officer's statutory jurisdiction is not subject to exclusion. The conclusion that a technical violation of a statute governing the execution of search warrants, such as a statute governing a police officer's territorial jurisdiction, does not provide a basis for the exclusion of evidence is also supported by our rules of court as follows:

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 its execution.*

There is no basis for concluding that the continued search of the 1996 Honda at 1062 Lafayette Avenue by the prosecutor's officer detectives, without participation by New York City police officers, was conducted in "bad faith."

In any event, our courts are not bound, in a prosecution in New Jersey, by the remedy a court of another jurisdiction would apply for a violation of a statute governing search warrants in that state.

V. Search Warrants

Reasonable Continuation Doctrine – Latest Case

State v. Nguyen, 419 NJ Super. 413 (App. Div. 2011)

The question whether a search warrant provides continuing authorization to search a place that the police have already searched is governed by the "reasonable continuation" doctrine. *State v. Finesmith*, 406 *N.J.Super.* 510, 519, 968 *A.*2d 715 (App.Div.2009). Under this doctrine, two conditions must be satisfied for a search to be considered a "reasonable continuation" of the search authorized by the warrant: "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.'

The continued search of the roof of the Honda at 1062 Lafayette Avenue satisfied both of these conditions. This search occurred within a short time after the original search in the parking lot at police headquarters. At that point, the murder weapon, which was the primary object of the warrant, had not yet been found. Consequently, the search was simply "a continuation of the original search, rather than a new and separate search." Moreover, the search did not involve any additional intrusion into defendant's or Eng's privacy interests because the car had not yet been returned to Eng. Therefore, this further search was "reasonable under the totality of the circumstances."

VII. Motor Vehicles

Search of impounded motor vehicles - Background

Chambers v. Maroney, 399 US 42 (1970) (Impoundment)

State v. Martin, 87 NJ 561 (1981) (Impoundment)

State v. Cooke, 163 NJ 657 (2000) (Exigency + PC)

State v. Pena-Flores, 198 NJ 6 (2009) (Telephonic Warrant)

VII. Motor Vehicles

Search of impounded motor vehicles – Latest Case

State v. Minitee, 415 NJ Super. 475 (App. Div. 2010)

Applying this mandate to these facts, the exigency that existed at the scene dissipated once the SUV was removed and placed in the custody of the Fort Lee Police Department. Thereafter, the police clearly had sufficient time to obtain, at a minimum, a telephonic warrant before searching the vehicle. Stated differently, the exigent circumstances that permitted the police to seize the SUV from the scene do not justify its subsequent warrantless search at the Fort Lee police station.

We harmonize the seemingly inconsistent holdings in *Martin* and *Pena–Flores* by finding that the exigent circumstances that existed at the scene only permitted the police to seize the vehicle and transport it to a secure location. Thereafter, the police were constitutionally required to obtain a warrant before searching the vehicle. This approach distinguishes between, and guards against, unreasonable *searches* and unreasonable *seizures,* the two fundamental protections embodied in Article I, Paragraph 7 of our State Constitution.

VII. Motor Vehicles

Search of impounded motor vehicles – Latest Case

State v. Minitee, 415 NJ Super. 475 (App. Div. 2010)

We consider the United States Supreme Court's decision in *Chambers v. Maroney*, 399 *U.S.* 42, 51–52, 90 *S.Ct.* 1975, 1981, 26 *L.Ed.*2d 419, 428 (1970), permitting warrantless searches of vehicles impounded by the police, to constitute binding authority only under the Fourth Amendment of the United States Constitution. Under Article I, Paragraph 7 of our State's Constitution, as interpreted by the Court in *Pena–Flores,* however, the police must, where practicable, obtain a warrant before searching a vehicle that has been seized and impounded under the exigent circumstances exception to the warrant requirement.

VII. Motor Vehicles

Exgient Circumstances – Latest case

State v. Shannon, 419 NJ Super. 235 (App. Div. 2011)

Here, there was no indication that the Asbury Park police officers did not have sufficient time to obtain a telephonic warrant pursuant to *Rule* 3:5–3(b). It was not late at night, the stop was in a residential area, and four police officers were initially present at the scene with defendant, who was alone. [The arresting officer] indicated that no one had approached the vehicle during the stop. Furthermore, there was no testimony elicited at the suppression hearing that suggested that the police officers or potential evidence in the car were in danger. Defendant was cooperative and had stepped away from the passenger compartment of the vehicle. In the companion case to *Pena–Flores*, *State v. Fuller*, 198 *N.J.* 6, 14, 965 *A.*2d 114 (2009), the Court found that because the stop took place in broad daylight, and sufficient police officers were at the scene and not in danger, "[t]here was simply no urgent, immediate need for the officers to conduct a full search of the automobile." Here, the circumstances were similar as the police were in no danger, and a telephonic warrant could have been sought expeditiously.

VII. Motor Vehicles

Decals and Markings – Latest case

Trautmann v. Christie, 418 NJ Super. 559 (App. Div. 2011)

Plaintiffs also present an argument based on the Act's legislative history that indicates the Act was intended to avoid disclosure of information that might facilitate the commission of crimes. They contend that age group, like information about medical condition and disability, tends to identify persons who are particularly vulnerable. Setting aside that there is nothing obvious to us about persons between sixteen and twenty-one that makes them peculiarly vulnerable to criminal acts, knowledge of vulnerability, unlike knowledge that identifies an individual or where the individual may be reached, does not facilitate crimes.

For the foregoing reasons, we reject the claim that Chapter 37 requires disclosure of personal or highly personal information that is prohibited by the Act. Chapter 37 is not preempted [by the Federal Driver's Privacy Protection Act, 18 *U.S.C.S.* §§ 2721–2725]