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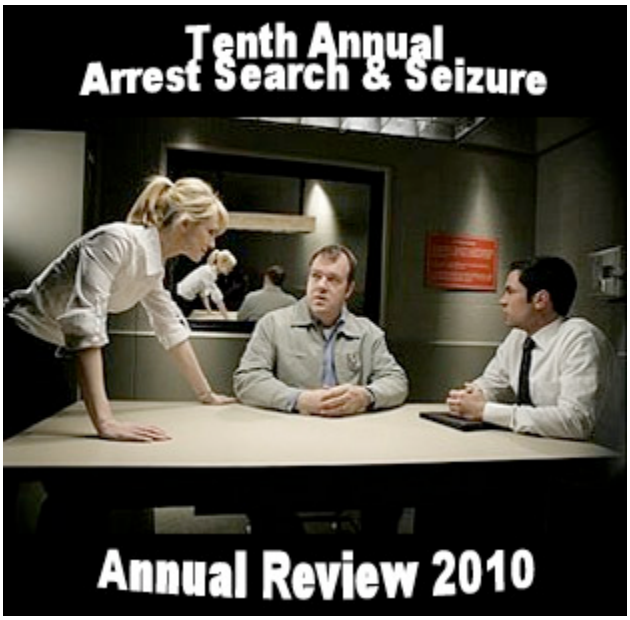

Lesson Plan

New Jersey Arrest, Search & Seizure Annual Review – 2010

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Part I.

Exigency and the Continuing Development of Pena-Flores

Introduction: Exigency & Pena-Flores

State v. Cooke, 63 N.J. 657 (2000)

We emphasize that there is a constitutional preference for a warrant, issued by a neutral judicial officer, supported by probable cause. "The cautionary procedure of procuring a warrant ensures that there is a reasonable basis for the search and that the police intrusion will be reasonably confined in scope. The automobile exception applies only in cases in which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant.

State v. Dunlap, 185 N.J. 543 (2006)

In addition, we reject the State's argument that "it would have been unduly burdensome and unreasonably restrictive to require the police to post a guard and repair to the courthouse for a warrant," There were at least ten officers present on the evening in question and even assuming that some were needed for other duties in connection with defendant's arrest and the on-going investigation, the State did not establish that an insufficient number ***1283* would have been left to guard the car. To say that the late hour made access to a judge difficult or unpracticable, is to ignore the procedures in place for emergent duty judges in every vicinage and the existence, since 1984, of the telephonic warrant procedure. *R.* 3:5-3(b). Indeed, it is not without significance that the investigators here had time to call the prosecutor's office at about 10:00 pm and obtain verbal authorization for the consensual recording of defendant's conversation with Tiaa.

One final note. Nothing in this opinion should be viewed as a retrenchment from the well-established principles governing the automobile exception to the warrant requirement. The standards remain the same: probable cause and exigent circumstances, each of which to be determined on a case-by-case basis. Here, the unique facts, particularly the presence of ten officers, fully justified the Appellate Division's conclusion that exigency was absent. Different facts, such as a roadside stop effectuated by only one or two officers, would likely have changed the calculus. Police safety and the preservation of evidence remain the preeminent determinants of exigency.

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

When the circumstances are sufficiently exigent that appearing before a judge to obtain a written warrant is either impossible or impracticable, but not so exigent that there is insufficient time to stabilize the situation and call for a warrant, police officers must obtain a telephonic warrant rather than conduct a warrantless search or seizure..

The State has argued that the exigent circumstances needed for a telephonic warrant are no different from the exigent circumstances justifying a bypass of the warrant requirement. We disagree, because if the State were correct the police would never have reason to apply for a telephonic warrant. Simply stated, for purposes of a telephonic warrant, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain a written warrant. For purposes of a warrantless search, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain any form of warrant.

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

Legitimate considerations are as varied as the possible scenarios surrounding an automobile stop. They include, for example, the time of day; the location of the stop; the nature of the neighborhood; the unfolding of the events establishing probable cause; the ratio of officers to suspects; the existence of confederates who know the location of the car and could remove it or its contents; whether the arrest was observed by passersby who could tamper with the car or its contents; whether it would be safe to leave the car unguarded and, if not, whether the delay that would be caused by obtaining a warrant would place the officers or the evidence at risk. As we have previously noted, "[f]or purposes of a warrantless search, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain *any form* of warrant."

State v. Pompa, 414 N.J. Super. 219 (App. Div. 2010)

The State had the burden of demonstrating exigent circumstances and its failure in this regard is revealed by the Trooper's testimony. During cross-examination at the suppression hearing, Trooper Budrewicz admitted defendant's vehicle was incapable of being moved because he was in possession of defendant's keys; common sense strongly suggested it was not likely another person with another set of keys was in the vicinity. In addition, the Trooper admitted he could have had the vehicle towed to a safe location while he applied for a warrant prior to conducting a search beyond the scope of the administrative inspection:

Q: But you could have towed [the truck] to Perryville station, secured it there, and gotten a warrant, or you could have left it there, or called a detective, or called the [prosecutor's] office and said I've got probable cause to search this thing, get me a warrant....

A: I could have done that but I had plain smell.

And, when asked why he decided to search instead of first obtaining a warrant, the officer insisted: "I don't need a warrant **236* with probable cause." Again, *Pena-Flores* requires more than probable cause; exigent circumstances are also required.

State v. Lewis, 411 N.J. Super. 483 (App. Div. 2010)

The stop of defendant's van occurred at night in a Plainfield neighborhood known for high crime and drug sales. As in *Pena-Flores,* the police had no reason to anticipate in advance that defendants would be involved in drug activity because the targets of their investigation were Courtney and Porter, not defendants. Moreover, the stop of defendant's car occurred at a location where it could be readily observed by persons in the neighborhood, such as the five or six people who congregated in the area after the stop. If they drove by, the occupants of the Camry who apparently had purchased drugs from defendants also would have been likely to observe the van and assume that it contained drugs. Therefore, it cannot be said in this case, as in *Fuller,* that "[t]here is nothing in the record to suggest that [defendants] had cohorts who might have come on the scene."

Moreover, although a second police car arrived on the scene after the stop, the search of the car and leather case had already been completed before then. Furthermore, it is unclear whether the officers in the second police car would have been available to detain defendants while Detectives Black and Staten applied for a warrant, because the officers involved in the Courtney-Porter investigation were responsible for searching four different residences, a car, and the persons of Courtney and Porter, and according to Detective Black, "were stretched out kind of thin."

State v. Minitee, ___ N.J. Super. ___ (App. Div. 2010)

The Pena-Flores Court thus established three basic requirements to uphold the warrantless search of a motor vehicle: (1) the stop must be unexpected; (2) the police must have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) there must exist exigent circumstances under which it is impracticable to obtain a warrant. As to the exigency requirement, the Court emphasized that it "encompasses far broader considerations than the mere mobility of the vehicle."

Applying these principles here, we hold that the police clearly had sufficient time to seek a warrant before searching the SUV the day after seizing it. After the car was taken into custody, there was no justification to search it without a warrant. Once the vehicle was removed from the scene, impounded, and taken to the Fort Lee police station, the State had sufficient time to obtain either a telephonic warrant or a traditional one. The warrantless search of the vehicle once it was in the custody of the State was clearly unjustified and unconstitutional.

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.

Part II. *Miranda* Issues

State in the Interest of A.S., 203 N.J. 131 (2010)

In light of those facts, all of which suggest that a clear and easy-to-understand explanation would be necessary to meaningfully inform A.S. of her constitutional rights, the actual efforts employed to inform her of those rights were woefully inadequate. Indeed, the detective abdicated his responsibility in that regard by having F.D. read A.S. her rights, a procedure which tainted the interview from its outset and must not be utilized in the future. It is a police officer's responsibility to read and to make sure that the juvenile understands his or her constitutional rights before proceeding with an interrogation. That requirement comports with the special care that must be taken with respect to the child's constitutional rights. The parent is not present to assume the role and responsibility of the police, but rather to act as a "buffer" and "to assist juveniles in understanding their rights, acting intelligently in waiving those rights, and otherwise remaining calm in the face of an interrogation."

We are hesitant to assume that any human being, even an experienced, thoughtful, and able Family Part judge-as the judge below undoubtedly was and is-can partition evidence and compartmentalize his or her decision-making so neatly, particularly when the evidence in issue is of such magnitude, the means by which the evidence was procured was so disturbing, and the judge has already rendered a determination on the ultimate question.

We do not believe that a broad representation requirement that would require the presence of an attorney in every such case is warranted. As we have discussed throughout this opinion, the presence of a parent is a "highly significant factor" in the *totality* of the circumstances analysis contemplated by *Presha* and, generally, that reassuring presence will assist the juvenile in the exercise of his or her rights. We decline to embrace a categorical rule that an attorney must be present any time that there is perceived clash in the interests of a parent based on a familial relationship with the victim or another involved in the

investigation. Even in cases of such apparent clashing interests, a parent may be able to fulfill the role envisioned in *Presha.* And, in those cases where a parent is truly conflicted, another adult-not necessarily an attorney-may be able to fulfill the parental assistance role envisioned by *Presha.* Moreover, when it is apparent to interrogating officers that a parent has competing and clashing interests in the subject of the interrogation, the police minimally should take steps to ensure that the parent is not allowed to assume the role of interrogator and, further, should strongly consider ceasing the interview when another adult, who is without a conflict of interest, can be made available to the child.

Florida v. Powell, 130 S. Ct. 1195 (2010)

Miranda **requires that a suspect "be warned prior to any questioning ... that he has the right to the presence of an attorney." This *Miranda* warning addresses the Court's particular concern that "[t]he circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege [to remain silent] by his interrogators." Responsive to that concern, the Court stated, as "an absolute prerequisite to interrogation," that an individual held for questioning "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." While the warnings prescribed by *Miranda* are invariable, this Court has not dictated the words in which the essential information must be conveyed In determining whether police warnings were satisfactory, reviewing courts are not required to "examine [them] as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'**

By informing Powell that he had "the right to talk to a lawyer before answering any of [their] questions," the Tampa officers communicated that he could consult with a lawyer before answering any particular question. And the statement that Powell had "the right to use any of [his] rights at any time [he] want[ed] during th[e] interview" confirmed that he could exercise his right to an attorney while the interrogation was underway. In combination, the two warnings reasonably conveyed the right to have an attorney present, not only at the outset of interrogation, but at all times. To reach the opposite conclusion, *i.e.,* that the attorney would not be present throughout the interrogation, the suspect would have to imagine the counterintuitive and unlikely scenario that, in order to consult counsel, he would be obliged to exit and reenter the interrogation room between each query.

Berghuis v. Thompkins, 130 S. Ct. 2250 (2010)

Thompkins' silence during the interrogation did not invoke his right to remain silent. A suspect's *Miranda* right to counsel must be invoked "unambiguously." If the accused makes an "ambiguous or equivocal" statement or no statement, the police are not required to end the interrogation, or ask questions to clarify the accused's intent There is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel. Both protect the privilege against compulsory self-incrimination by requiring an interrogation to cease when either right is invoked. The unambiguous invocation requirement results in an objective inquiry that "avoid[s] difficulties of proof and ... provide[s] guidance to officers" on how to proceed in the face of ambiguity. . Had Thompkins said that he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the questioning. He did neither. Pp. 2259 - 2260.

Thompkins waived his right to remain silent when he knowingly and voluntarily made a statement to police. A waiver must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception" and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Such a waiver may be "implied" through a "defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver. If the State establishes that a *Miranda* warning was given and that it was understood by the accused, an accused's un-coerced statement establishes an implied waiver.

Maryland v. Shatzer, 130 S. Ct. 1213 (2010).

Edwards **created a presumption that once a suspect invokes the *Miranda* right to the presence of counsel, any waiver of that right in response to a subsequent police attempt at custodial interrogation is involuntary. *Edwards* ' fundamental purpose is to "[p]reserv[e] the integrity of an accused's choice to communicate with police only through counsel, by "prevent[ing] police from badgering [him] into waiving his previously asserted *Miranda* rights," It is easy to believe that a suspect's later waiver was coerced or badgered when he has been held in uninterrupted *Miranda* custody since his first refusal to waive. He remains cut off from his normal life and isolated in a "police-dominated atmosphere," But where a suspect has been released from custody and returned to his normal life for some time before the later attempted interrogation, there is little reason to think that his change of heart has been coerced. Because the *Edwards* presumption has been established by opinion of this Court, it is appropriate for this Court to specify the period of release from custody that will terminate its application. The Court concludes that the appropriate period is 14 days, which provides ample time for the suspect to get re-acclimated to his normal life, consult with friends and counsel, and shake off any residual coercive effects of prior custody.**

Shatzer's release back into the general prison population constitutes a break in *Miranda* custody. Lawful imprisonment imposed upon conviction does not create the coercive pressures produced by investigative custody that justify *Edwards.* When previously incarcerated suspects are released back into the general prison population, they return to their accustomed surroundings and daily routine-they regain the degree of control they had over their lives before the attempted interrogation. Their continued detention is relatively disconnected from their prior unwillingness to cooperate in an investigation. The "inherently compelling pressures" of custodial interrogation ended when Shatzer returned to his normal life.

Part III. Warrants

State v. Broom-Smith, 201 N.J. 229 (2010)

Nevertheless, in the exercise of our supervisory authority over the courts, we have determined that, going forward, some order and uniformity must be imposed on the cross-assignment procedure. First, we reiterate that the rule and the statute are co-extensive and authorize cross-assignment only in cases of disqualification or "inability" to hear a case. That, generally, will require the officers seeking the warrant to attempt to contact the judge of the territorially-appropriate court. It will be that judge's disqualification or inability to hear the case that will trigger the cross-assignment order. Obviously, if the judge is absent or otherwise incapacitated (for example, away on vacation or hospitalized), the officers need not go first to the judge's chambers, office or home. In that case, the "inability" standard is plainly satisfied. However, the fact that the judge is busy with other matters or home for lunch should not automatically trigger cross-assignment. Rather, the officers should wait a reasonable period unless, for some reason, the matter is emergent and time is of the essence.

Further, the fact that a particular municipal court is not "in session," that is, holding court, does not necessarily mean that the judge is "unable" to hear a warrant application. It may be that in furtherance of his private practice, the judge is far from his vicinage. In that case, he may, in fact, be "unable" to hear the matter, especially if there are time constraints involved. But it does not follow that a judge who is sitting in his local law office is "unable" to entertain a warrant application, especially since that is part and parcel of his judicial responsibilities.

State v. Broom-Smith, 201 N.J. 229 (2010)

Moreover, the cross-assignment order, which may provide for more than one substitute judge, should prescribe the sequence to which substitute judges are to be resorted. That, in turn, will eliminate any question of judge shopping. Practically speaking, prescribing the sequence will militate against assigning every municipal court judge in a vicinage as a substitute for every other judge because of the burden that would cast on the first judges in the sequence.

It goes without saying that when a warrant applicant applies to a substitute judge, a record should be made of the reason the application is not being presented to the territorially-appropriate court. Finally, the cross-assignment order should be renewed annually to account for changes in judicial appointments.

State v. Handy, 412 N.J. Super. 492 (App. Div. 2010)

The facts in the case before us are quite distinct from those in *Herring.* Rather than a past clerical error, such as neglecting to remove a no-longer valid warrant, the police dispatcher in this case inaccurately reported to the police officer in the field that there was an active warrant for Handy when, in fact, there were significant discrepancies in the spelling of the first name and the date of birth that were not reported at the same time, thereby causing the arrest of the wrong person. Had the police dispatcher reported the discrepancies at the same time as the existence of the warrant, Drogo would have attempted to verify that the warrant was for Handy before, rather than after, the arrest. Inasmuch as he was never able to verify that the warrant was for Handy, the arrest and the resulting search would not have taken place.

The State's suggestion on appeal that the warrant may actually have been for Handy is simply not supported in the record. As previously noted, the date of birth Handy gave to Drogo is the same date of birth reflected on the pre-sentence report. In addition, the list of aliases in the pre-sentence report does not include "Jermaine O. Handy," the name on the warrant.

The deterrent value of applying the exclusionary rule in this case is, in our view, quite significant, especially in contrast to the low value under the factual circumstances before the Supreme Court in *Herring.* 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.

State v. Chippero, 201 N.J. 14 (2009)

Although the evidence that justifies both an arrest and the issuance of a search warrant must support a finding of probable cause, the two probable cause determinations are not identical. A finding of probable cause as to one does not mean that probable cause as to the other must follow, nor does the lack of one compel a finding of the lack of proof for the other. Thus, evidence that is insufficient to justify the arrest of a person nonetheless may be sufficient to justify the search of a home in connection with the investigation of a crime.

A search warrant is presumed to be valid and an appellate court's role is not to determine anew whether there was probable cause for issuance of the warrant, but rather, whether there is evidence to support the finding made by the warrant-issuing judge. Here there was and, therefore, we reverse the Appellate Division's contrary determination.

Fundamentally, arrest warrants and search warrants protect different interests. A search warrant seeking evidence in support of a police investigation into a crime protects individual privacy interests of a suspect, or of a third party, against unreasonable intrusion by police, whereas, an arrest warrant protects against unreasonable seizure of and the resultant loss of liberty to an individual believed to have committed a crime. The differing purposes affect the focus of each inquiry The magistrate's inquiry in respect of a search warrant must assess the connection of the item sought to be seized 1) to the crime being investigated, and 2) to the location to be searched as its likely present location Probable cause to arrest, however, hinges on the distinct and discrete inquiry into whether the person to be arrested has committed or is committing a criminal offense.. Thus, the factual predicate for a showing of probable cause to arrest may not be necessarily the same as that required for probable cause to search, as many courts have noted.

State v. Chippero, 201 N.J. 14 (2009)

We join those many courts in recognizing that probable cause to arrest and probable cause to search involve distinct and not necessarily identical inquiries. A finding of probable cause as to one does not mean that probable cause as to the other must follow, nor does the lack of one compel a finding that there is a lack of support for the other. Although a probable cause determination that an individual committed a crime may increase the likelihood that the individual's residence contains evidence of the crime, a court may find a lack of probable cause to arrest an individual and yet determine that probable cause exists to search the home where that individual resides. Simply put, a probable cause determination to search a home where the suspect lives may be valid irrespective of whether probable cause to arrest that particular individual has crystallized.

Part IV. Procedural Issues

State v. Carvajal, 202 N.J. 214 (2010)

For standing purposes, property is abandoned when a person, who has control or dominion over property, knowingly and voluntarily relinquishes any possessory or ownership interest in the property and when there are no other apparent or known owners of the property. We determined that this definition of abandonment "provides the strongest guarantee that the police will not unconstitutionally search or seize property, which has multiple apparent owners, merely because one person has disclaimed a possessory or ownership interest in that property. The State bears the burden of proving "by a preponderance of the evidence that the defendant abandoned the property and therefore has no standing to object to the search.

State v. Minitee, ___ N.J. Super. ___ (App. Div. 2010)

Bland's participatory interest in the red SUV registered to Minitee stems from his occupancy of the vehicle at the time Officer Lorenzo first stopped it. His occupancy gave him dominion and use of the area in and around the vehicle where the police subsequently found the incriminatory evidence. This participatory interest continued, unabated, to that point in time when the police seized the vehicle and arrested Minitee and her codefendant.

Relying on *Bruns,* the State argues that Bland cannot show that he has a participatory interest in the vehicle because "there is no evidence in the record that [he] was even an occupant of the SUV prior to its seizure." The State is mistaken. As noted, the record shows that Bland was an occupant of the SUV at the time Lorenzo ordered him to exit the vehicle. By Officer Gerardo's own account, he came upon Minitee and Jones next to the SUV just minutes after Lorenzo reported his encounter with Bland over the police radio and described the vehicle's make, model, and direction.

These facts are in sharp contrast to the salient facts in *Bruns.* As the Court emphasized in *Bruns,* the defendant did not have a proprietary or possessory interest in the vehicle that was searched. The defendant in *Bruns* argued that he had a "participatory interest in the weapons seized because they were used to commit the robbery for which he was charged." In rejecting the defendant's argument, the Court noted that Bruns "was not a passenger in the vehicle and he was not in the vicinity of the vehicle at the time it was searched." *Ibid.* With these key facts in mind, the Court held that a "generalized connection" to the evidence seized is not enough to confer standing based on a participatory interest. According to *Bruns,* to confer standing based on a participatory interest there "must be at a minimum some contemporary connection between the defendant and the place searched or the items seized.

Applying these principles to the facts in this case, we are satisfied that Bland has standing to challenge the propriety of the vehicle's warrantless search. His occupancy of the SUV just minutes before the police seized it conferred upon him the constitutionally required participatory interest to challenge the search of that vehicle.

State v. Williams, 410 N.J. Super. 549 (App. Div. 2009)

[T]he determination of whether the police "have obtained the evidence by means that are sufficiently independent to dissipate the taint of their illegal conduct" requires consideration of three factors: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct.

Under the three-factor test for determining significant attenuation between unlawful police conduct and seizure of evidence, we perceive no basis for concluding that the unconstitutional stop of defendant constituted "flagran[t] ... police misconduct." However, the other factors militate against the conclusion that there was a significant attenuation between the stop and the **563* seizure of the cocaine discarded by defendant. Only four or five seconds elapsed between when the arresting officer directed defendant to stop his bicycle and defendant discarded the cocaine. Consequently, there was a very close "temporal proximity between the illegal conduct and the [recovery of] the challenged evidence[.]"

Most importantly, there were no significant "intervening circumstances" between the unlawful police command to defendant to s Defendant did not push a police officer, flee in a car resulting in a mile and a quarter police pursuit, or seek to avoid apprehension by returning to a lawfully stopped car after the police had removed him from the car. In those cases the defendant's intervening criminal acts not only constituted a break in the chain of causation between the unlawful police conduct and seizure of evidence but also posed a risk of physical injury to police officers and, members of the public. In contrast, defendant did not force the officers to engage in a lengthy and dangerous pursuit to apprehend him or engage in any act of physical aggression against the arresting officer and his partner. In fact, the officers physically accosted defendant by grabbing him on his bicycle. Therefore, there is no basis for concluding that the police seized the cocaine discarded by defendant "by means that [were] sufficiently independent to dissipate the taint of their [prior] illegal conduct.

Part V. Residential Searches

Michigan v. Fisher, 130 S.Ct. 546 (2009)

[The emergency aid exception to the warrant requirement is based up the need to assist persons who are seriously injured or threatened with such injury. Thus, law enforcement officers "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." This "emergency aid exception" does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. It requires only "an objectively reasonable basis for believing," that "a person within [the house] is in need of immediate aid.

State v. O'Donnell, ___ N.J. ___ (2010)

The reasonableness of continuous police presence at the location initially accessed under the emergency aid exception is defined by [a three-part test] (1) "[t]he public official must have an objectively reasonable belief, even if later found to be erroneous, that an emergency demands immediate assistance in order to protect or preserve life, or to prevent serious injury; [(2)] the provision of assistance must be the prime motive for the public official's warrantless entry; and, [(3)] any search must be limited to those places that have a nexus to the emergency.

In this case, where the police gained access and seized evidence without a warrant, the propriety of the access indisputably was established by the emergency aid exception to the warrant requirement; the continued police presence at the site of the dead body of a six-year-old child was authorized until the scene could be turned over to the medical examiner without a break in custody; and the seizure of evidence of a crime was authorized by the plain view doctrine. In respect of the discrete issue presented in this appeal-whether it was proper for the police to remain on the premises and seize evidence after discovery of the dead body abated the initial emergency-the conclusion is, to us, clear: because the corpse remained at what was obviously the death scene and the police had the obligation to retain control of the premises until that control could be transferred to the medical examiner, the police had a continuing right to remain present at the scene. Thus, their continued presence was consonant with constitutional principles, and the plain view seizures performed during that period thus were constitutionally authorized.

State v. Jefferson, 413 N.J. Super. 344 (App. Div. 2010)

The State has not cited any case recognizing an exception from the warrant requirement when the police wish to enter a home to effect a *Terry*-type investigative detention of a suspect. The State's argument that the police have such authority is inconsistent with the constitutional requirement that police have a warrant, or establish an exception to the warrant requirement, when they enter a home to make a formal arrest. If the police need a warrant or a recognized exception to enter a home to make an arrest, clearly they may not enter a home to effect a warrantless *Terry*-type detention, which our Supreme Court has determined to be constitutional because it is "minimally intrusive."

In this case, the police had no warrant and made no showing of an exception from the warrant requirement when Sergeant Smith partially entered defendant's residence to stop him from closing his front door. That conduct of the police infringed upon the "firm line at the entrance to the house" when applying the protections of the Fourth Amendment.

State v. Davila, 203 N.J. 97 (2010)

We hold that a protective sweep of a home may only occur when (1) law enforcement officers are lawfully within the 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 cursory, and (2) it is limited in scope to locations in which an individual could be concealed. As additional guidance we add the following. The search should be strictly limited in duration to the time frame during which police are lawfully within the premises. Moreover, when a protective sweep is performed in a non-arrest setting, as when police presence in the home is not due to the execution of an arrest warrant, the legitimacy of the police presence must be probed. And, a careful examination must be undertaken of the basis for the asserted reasonable articulable suspicion of dangerous persons on the premises. The law enforcement officers cannot have created the danger to which they became exposed by entering the premises, and thereby bootstrap into an entitlement to perform a protective sweep. Thus the inquiry should examine whether the request for entry was legitimate or a ruse and whether the officers can identify articulable reasons for suspecting potential harm from a dangerous person that arose once the officers arrived at the scene.

In summary, the review of a protective sweep search and seizure shall require the State to bear the burden of proving, in these warrantless search contexts, the reasonableness of the protective sweep. That requires a demonstration that the police presence at the property that was swept was both lawful and legitimate.

Part VI. Automobile Searches

State v. Mai, 202 N.J. 12 (2010)

We see no reason to depart from the elegant reasoning that undergirds this settled principle in making the parallel determination of whether a police officer has the authority to open a vehicle door as part of issuing an order to exit the vehicle. In the realm of defining reasonable searches and seizures, no meaningful or relevant difference exists between the grant of authority to order an occupant of a vehicle to exit the vehicle and the authority to open the door as part of issuing that lawful order. Plain logic demands that the principles that govern whether a passenger of a vehicle lawfully can be ordered out of the vehicle must apply with equal force to whether a police officer is entitled, as a corollary and reasonable safety measure, to open the door as part of issuing a proper order to exit.

State v. Best, 201 N.J. 100 (2010)

It is the school environment and the need for safety, order, and discipline that is the underpinning for the school official-who has reasonable grounds to believe that a student possesses contraband-to conduct a reasonable search for such evidence. To be sure, a student may hide contraband in his or her clothing, purse, book bag, locker, or automobile. Consequently, we conclude that the reasonableness standard, and not the traditional warrant and probable cause requirements, applies to the school authorities' search of a student's automobile on school property.

We turn now to apply the reasonable grounds standard to the facts here. As noted, that standard requires that we first determine whether the school authority was justified to conduct a search at the inc That is, were there reasonable grounds for suspecting that the search would turn up evidence that the student violated or was violating either the law or the rules of the school?

Here, the vice principal met with a student, who appeared to be under the influence of drugs, and the student indicated that defendant had given him a green pill. That information was sufficient for the vice principal to interview defendant and, once defendant denied any knowledge, to search his clothing for contraband.

The second part of the test is whether the search conducted was reasonably related in scope to the circumstances that justified the interference in the first place. . The search of defendant's person revealed three white capsules in his pants pocket, but no green pills were found. Defendant then admitted that he sold a white pill to a student for five dollars, claiming the pill was a nutritional supplement. The vice principal next extended the search to defendant's locker, and when that proved unsuccessful, to defendant's car. It was reasonable for the vice principal to believe that defendant may have additional contraband in all areas accessible to him on school property, including his locker and his car. Consequently, the vice principal's search of defendant's car was reasonably related in scope to the various locations on school property that defendant might have placed the contraband-on his person, his locker, and his car.

Part VII. Searches of the Person

State v. Privott, 203 N.J. 16 (2010)

In assessing the scope of the search by the officer, the evidence is clear that defendant was cooperative at all times. When stopped, defendant placed his hands against a fence as instructed by the officer. A reasonable search, as well as the least intrusive maneuver needed to protect the safety of the officer against a possible weapon, would have been the traditional pat-down search of defendant's outer clothing. That did not occur. Rather, the police officer lifted defendant's tee-shirt to expose defendant's stomach, and in doing so, observed a plastic bag with suspected drugs in the waistband of defendant's pants. That maneuver exceeded the scope of the pat-down search needed to protect the officer against defendant having a weapon and was akin to a generalized cursory search of defendant that is not condoned.

This is not a case in which the officer felt a bulge, but could not determine what it was, and the defendant refused to obey the orders of the police and continued to move his hands towards the unidentified bulge. Under those circumstances, we found "an objectively reasonable concern for the officers' safety" to validate the officer's removal of the object. Nor is this case in which the officer first conducted a lawful pat-down and upon feeling a hard object, removed it to discover a weapon.

As we have often "stated, the facts surrounding the event are pivotal." Our jurisprudence attempts to strike a balance between the competing interests of an individual's right to privacy and the need to protect the police from persons with weapons. In this case, we strike that balance in favor of the traditional pat-down search. We conclude that the officer's conduct in lifting defendant's shirt exceeded the reasonable intrusion that we permit as part of a *Terry* stop.

Part VIII. Electronic Comminications

City of Ontario v. Quon, 130 S. Ct. 2619 (2010)

A broad holding concerning employees' privacy expectations vis-à-vis employer-provided technological equipment might have implications for future cases that cannot be predicted. It is preferable to dispose of this case on narrower grounds. For present purposes we assume several propositions *arguendo:* First, Quon had a reasonable expectation of privacy in the text messages sent on the pager provided to him by the City; second, petitioners' review of the transcript constituted a search within the meaning of the Fourth Amendment; and third, the principles applicable to a government employer's search of an employee's physical office apply with at least the same force when the employer intrudes on the employee's privacy in the electronic sphere.

If Quon had a reasonable expectation of privacy in his text messages, petitioners did not necessarily violate the Fourth Amendment by obtaining and reviewing the transcripts. Although as a general matter, warrantless searches "are *per se* unreasonable under the Fourth Amendment," there are "a few specifically established and well-delineated exceptions" to that general rule. The Court has held that the "'special needs' " of the workplace justify one such exception.

[W]hen conducted for a "non-investigatory, work-related purpos[e]" or for the "investigatio[n] of work-related misconduct," a government employer's warrantless search is reasonable if it is " 'justified at its inception' " and if " 'the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of' " the circumstances giving rise to the search.

The search was justified at its inception because there were "reasonable grounds for suspecting that the search [was] necessary for a non-investigatory work-related purpose." As for the scope of the search, reviewing the transcripts was reasonable because it was an efficient and expedient way to determine whether Quon's overages were the result of work-related messaging or personal use.