Around the World in Criminal Law

Join us for a discussion about the latest trends and developments in criminal practice, including a federal, state court, municipal practice and Irish perspective. Don't miss this engaging conversation with practitioners from both sides of the pond.

Moderator:
Robert A. Magnanini, Stone & Magnanini LLP

Speakers:
Brian J. Neary, Law Offices of Brian J. Neary
Kenneth Vercammen, Kenneth Vercammen & Associates PC

AROUND THE WORLD IN CRIMINAL LAW

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TIPPLING ACT OF 1735

- ''An Act to prevent the Evil arising by the Retailers of Beer, Ale, Brandy, Rum, Geneva, Aquavitae, and other Spirituous Liquors, giving Credit to Servants, Day-Labourers, and other Persons, who usually work or ply for Hire or Wages.''

WHEREAS many great inconveniences have arisen, and do daily arise, from the credit given by retailers of strong beer, ale, brandy, rum, Geneva, aquavitae, and other spirituous liquors, to servants, day-labourers, and other persons, who usually work or ply for hire or wages; by means of which credit servants [and others] are induced and tempted to resort too frequently to the houses or shops of the retailers of such liquors, where they often drink to excess, and thereby frequently run into debt, and lay themselves under the temptation of purloining their masters goods to discharge such debts, and do further by that means destroy their health, and render themselves incapable of discharging the business of their respective callings…, and are often thrown into goal, where they lye in a miserable and starving condition, to the ruin of themselves and their families; which mischiefs must be in a great measure, if not wholly prevented, if some restraint was put upon the credit usually given to the persons aforesaid… for remedy thereof be it enacted by the King's most excellent Majesty…

TIPPLING ACT OF 1735

That no retailer of strong beer, ale, brandy, rum, Geneva, aquavitae, or other spirituous liquors… sell upon trust or credit… any [liquor] to any servant… or to any other person usually working or plying for hire or wages, to the amount or value of any sum of money exceeding the sum of one shilling, shall be entitled or have any remedy to recover the same either at law or in equity against any of the persons aforesaid [and] all promissory notes, bonds or other writings obligatory given as security for the payment of such debts so contracted are hereby declared void and of no effect.

TIPPLING ACT OF 1735

The Law of Unintended Consequences

The Act was repealed because it was realized that it allowed the workers to drink for free.

REVOCATION HEARINGS

Revocation of probation or pretrial supervised release are governed by Federal Rule of Criminal Procedure 32.1.

If a defendant is in custody for an alleged violation, a judge must "promptly conduct" a preliminary hearing to determine if there is probable cause to believe that a violation occurred.

A defendant may waive the preliminary hearing.

REVOCATION HEARINGS

PRELIMINARY HEARING

The Court must give a defendant notice of the hearing and its purpose, the alleged violation and the person's right to retain counsel or to request appointment of counsel.

The defendant must be given an opportunity question any adverse witness unless the judge determines that the interest of justice does not require the witness to appear.

The court must dismiss the proceedings if it does not find probable cause to believe that a violation has occurred. If the court finds probable cause, the judge must conduct a revocation hearing.

REVOCATION HEARINGS

If the defendant does not waive it, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction.

The defendant has a right to written notice of the alleged violation, disclosure of evidence against him, and an opportunity to appear, to present evidence, and to question any adverse witness, unless the court determines that the interest of justice does not require the witness to appear.

REVOCATION HEARINGS

MODIFICATION OF CONDITIONS OF PROBATION OR SUPERVISED RELEASE

The Court must hold a hearing before modifying conditions of probation or of supervised release.

The person has a right to counsel, to make a statement, and to present mitigating information.

However, a hearing is not required if (1) the person waives the hearing or (2) if the relief sought is favorable to the person, does not extend the term of probation or supervised release, and the government does not object.

Practice Tip: Defense attorneys who want to present a motion to modify bail conditions or who want to present a bail package after initially consenting to detention should first present the package to Pretrial Services to vet, and to hopefully approve, before coming to the court.

REVOCATION HEARINGS

DUE PROCESS CONSIDERATIONS APPLY

Revocation proceedings must be conducted according to principles of fundamental fairness.

Morrissey v. Brewer, 408 U.S. 471 (1972) – Establishes certain procedural requirements for parole revocation hearings, recognizing that society has an "interest in treating the parolee with basic fairness."

Gagnon v. Scarpelli, 411 U.S. 778 (1973) – Holding that "fundamental fairness – the touchstone of due process – requires that the State provide at its expense counsel for indigent probationers or parolees."

The United States Supreme Court determined that fundamental fairness presumptively requires counsel when a probationer claims that "there are substantial reasons which justified or mitigated the violation and make revocation inappropriate."

REVOCATION HEARINGS

DISCOVERY

Rule 32.1(b)(2) provides that a defendant facing a supervised release revocation is entitled to "disclosure of the evidence against the person."

In general, discovery rights at revocation hearings appear to be limited to evidence that will actually be used to prove the violation.

Favorable evidence should be requested in a timely fashion prior to the revocation hearing.

Rule 26.2 applies at a revocation hearing and requires the disclosure of witness statements.

REVOCATION HEARINGS

EVIDENCE

The Federal Rules of Evidence generally do not apply to revocation hearings.

F.R.E. 1101(d)(3) states that the rules of evidence do not apply to proceedings such as "granting or revoking probation or supervised release."

"[T]he process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial." Morrissey v. Brewer, 408 U.S. 417 (1972).

Evidence that would establish guilty beyond a reasonable doubt it not required to support an order revoking probation. United States v. Francischine, 512 F.2d 827 (5th Cir. 1975).

REVOCATION HEARINGS

HEARSAY AND THE CONFRONTATION CLAUSE

IT'S A BALANCING TEST!

The Sixth Amendment right to confrontation does not apply to revocation proceedings. Rather, a parolee's limited right to confrontation stems from the Fifth Amendment's due process clause. United States v. Lloyd, 556 F.3d 341 (3d. Cir. 2009).

The government must demonstrate "good cause" to deny the right of confrontation.

In Lloyd, the Third Circuit adopted the Advisory Committee Notes to Rule 32.1(b)(2)(c) "[recognizing] that the court should apply a balancing test at the hearing itself when considering the release's asserted right to cross-examine the adverse witness. The court is to balance the person's interest in the constitutionally guaranteed right to confrontation against the government's good cause for denying it."

"The reliability of the proffered hearsay is a principle factor, although not the sole factor, relevant to the releasee's interest in confrontation. To outweigh this interest, the government must… provide good cause for a hearsay declarant's absence. [However], if the releasee's interest in confrontation is overwhelmed by the hearsay's reliability, the government need not show cause for the declarant's absence."

REVOCATION HEARINGS

FACTORS CONSIDERED WHEN SENTENCING A PERSON FOR VIOLATING CONDITIONS OF SUPERVISED RELEASE

CIRCUIT SPLIT!

REVOCATION HEARINGS

FACTORS CONSIDERED WHEN SENTENCING A PERSON FOR VIOLATING CONDITIONS OF SUPERVISED RELEASE

The supervised release statute, 18 U.S.C. 3583(e), lists factors from 18 U.S.C. 3553(a) for a court to consider when sentencing a person for violating a supervised release condition. In that list, Congress omitted the factors set forth in section 3553(a)(2)(A) – the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

Five circuit courts of appeals, including the Third Circuit, have concluded that district courts may rely on the section 3553(a)(2)(A) factors.

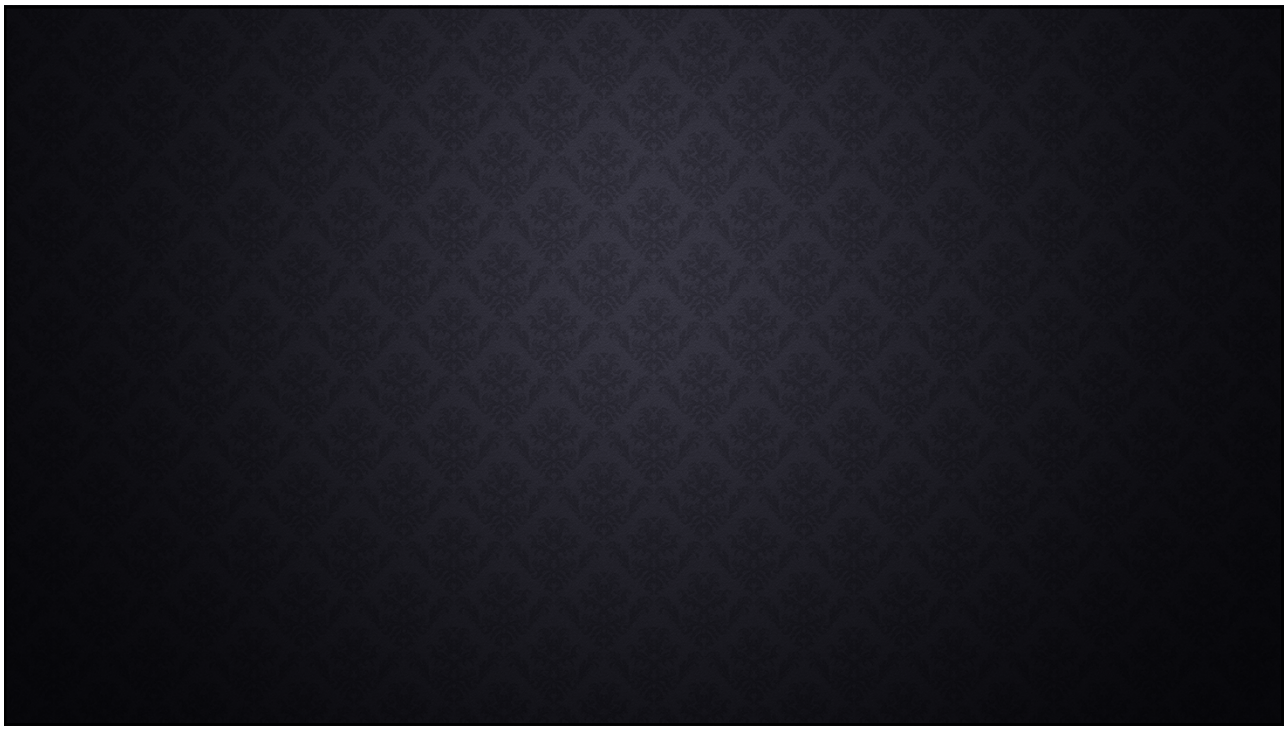
Four circuit courts of appeals have concluded that they may not.

On October 21, 2024, the Supreme Court of the United States grated review in Esteras v. United States, to consider the question of whether, even though Congress excluded section 3553(a)(2)(A) from section 3583(e)'s list of factors to consider when revoking supervised release, a district court may nonetheless rely on the 3553(a)(2)(A) factors when revoking supervised release.

MODIFICATION OF CONDITIONS

Light at the End of the Tunnel

- Probation conditions should be subject to modification because the sentencing court must to be able to respond to changes in the probationer's circumstances as well as new ideas and methods of rehabilitation. (See, generally, ABA Standards Relating to Probation, sec. 3.3).



NJSBA
NEW JERSEY STATE BAR ASSOCIATION

International Criminal Law

New Jersey State Bar Association

Dublin, Ireland

November 8, 2024

Moderator: Robert A. Magnanini, Esq.

Speakers: Kenneth Vercammen, Esq. and Brian Neary, Esq.

Major Cases and Laws in Municipal Court & DWI

Kenneth Vercammen, Esq.
2053 Woodbridge Ave.
Edison, NJ 08817

PowerPoint & cases available:

Email VercammenLaw@Njlaws.com

1. New DWI PENALTIES FOR OFFENSES
as of February 20, 2024 [Dont drive drunk]
39:4-50(a)
Loss of DL Until interlock installed if less than .15BAC

1b New Rules for Pre-Court Installation of Interlock Device of persons pending a DWI

Drivers required to make multiple trips to MVC when they install interlock pre-court

3 DRE in DWI cases requires a 12 step process

State v. Olenowski

253 N.J. 133 (2023)

4 Officer could not walk onto driveway to look into hole in porch

State v Ingram

474 N.J. Super. 522

(App. Div. 2023)

5 Suppression where dispatcher just assumed robber was black

State v Scott

474 N.J. Super. 388

(App. Div. 2023)

6 Interlock issues post plea are to be resolved by court, not MVC

State v. Coviello

252 N.J. 539 (2023)

7 Statement to Rutgers Police suppressed where Miranda not correctly given

State v. Bullock

253 N.J. 512 (2023)

8. Stay on trials and Hearings on reliability of new DWI Alcotest 9510 Machine 9510 State v. Cunningham

9 Exigent-circumstances exception to the warrant requirement does not justify the officer's search a black bag

State v. Anthony Miranda

253 N.J. 461 (2023)

10 Delayed warrantless searches of a person permitted where assault suspect removing substance from fingers

State v. Torres

253 N.J. 485 (2023)

11. Police dog sniff rejected here

State v. Smart

253 N.J. 156 (2023)

12 Detention of driver after initial stop on MDT unconstitutionally prolonged
State v Williams
254 N.J. 8 (2023

13 After Miranda warning issued defendant executed a knowing, intelligent, and voluntary waiver

State v. Erazo

254 N.J. 277 (2023)

14 Engine compartment of car could not be searched without warrant

State v Cohen

254 N.J. 308 (2023)

15 Court should hold evidentiary hearing on Sup mt where bodycam deleted State v Jones

475 N.J. Super. 520 (App. Div. 2023)

16 Unsolicited hospital statement by drunk driver admissible at trial

State v. Tiwana

256 N.J. 33 (2023)

17. Trial court should have carefully watched video where police did not wait before search

State v Nieves

476 N.J. Super. 405 (App Div. 2024)

18 Smelling pot after valid stop permitted search pre change in law

State v Baker

478 N.J. Super. 116

(App. Div. 2024)

19 Limiting pull over for Tinted window given pipeline retroactivity

State v Haskins

477 N.J. Super. 630

(App. Div. 2024)

20 Police could do short inventory search at the scene of impounded DWI car State v Courtney
477 N.J. Super. 630
(App Div. 2024)

21 **Leaving suitcase behind in Penn station permitted police to search without warrant**

State v. Gartrell

256 N.J. 241 (2024)

22 Police could not follow suspected drunk driver into garage

State v Mellody

479 N.J. Super. 90

(App Div 2024)

23 Disorderly person defendants not excluded from Recovery/Drug court

State v Matrongolo

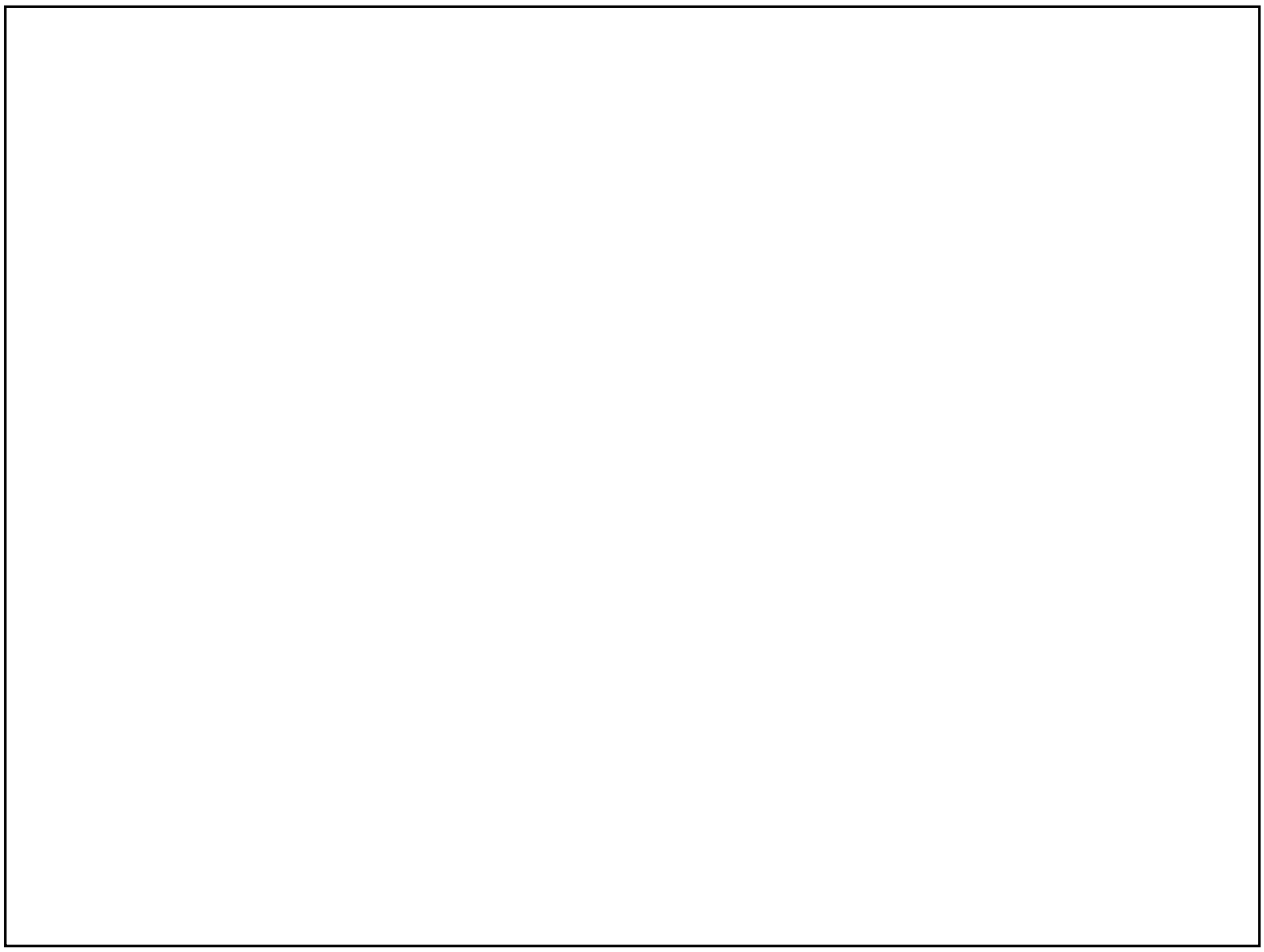
479 N.J. Super. 8

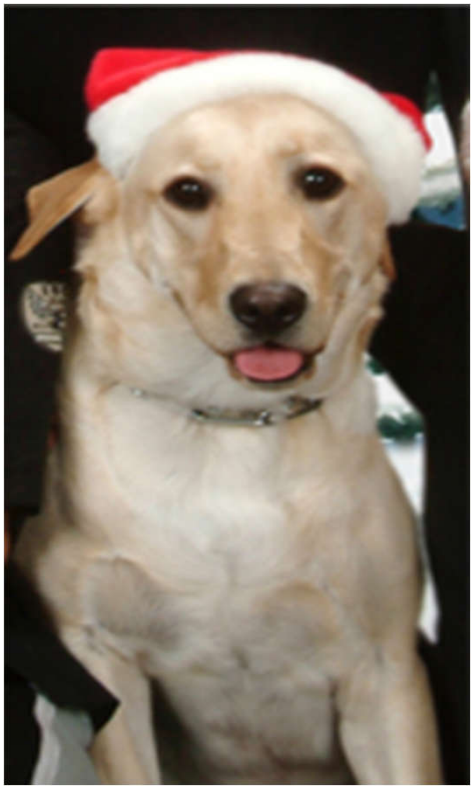
(App. Div 2024)

24 Lane change vio here did not permit drug dog sniff

State v Boone

479 N.J. Super. 193 (App. Div. 2024)





Vercammen
family dog
invites you
to the
Happy Hour
August 8, 2025
Headliner
Club Neptune

For copy of PowerPoint or Free email newsletter on new cases on Municipal Court VercammenLaw@Njlaws.com

Future Questions?

fax Ken V at 732-572-0030 & include your cell number so we can call your cell after 6pm

For articles and information on criminal defense visit www.njlaws.com

Kenneth Vercammen, Esq. Edison, NJ

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Are You Running Your Practice Like a Business? - $$$ Municipal Court & Ethics

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2: Criminal Municipal Representation

Mun Ct Questionnaire Q VercammenLaw

PLEASE TYPE UP PAGES 1 & 2 OF OUR INTERVIEW FORM AND EMAIL TO OUR OFFICE.

Save as a word or text document with your last name, not a pdf.

Email back with your name in subject line.

3. INTERVIEW FORM

NAME _____

CELL #(_____)_____ E-MAIL _____

Referred By: _____
If referred by a person, is this a client or attorney?

WHAT ARE YOU CHARGED WITH Most serious first #
[At some point email provide tickets, and other important papers to office]
Entire Summons # or Ticket Number
_____

Type of violation [most serious first Criminal starts with 2C, traffic starts with 39:4- _____

4 What Happened: _____

What did you tell the police?
[not statement _____
_____

Occupation: _____ Employer: _____
[can they afford you?]

Your Age _____

Prior **criminal charges,** [arrests] or convictions, even if charges dismissed _____

If you are not a US Citizen, please write here: __

What questions do you have/ how can we help you and anything else important: _____

5. RPC 1.9 … WHAT YOUR ATTORNEY CAN DO FOR YOU -AGREEMENT TO PROVIDE MUNICIPAL COURT LEGAL SERVICES

Thank you for contacting Kenneth Vercammen & Associates, PC for representation in a Criminal matter. This agreement is made between _____ referred to as "You", and the Kenneth Vercammen & Associates

1. Legal Services To Be Provided. We will represent you in connection with the charges pending against you in the _____ Court, provided all legal fees are paid.
Our fee for such representation is _____.

2. Fees. Fees can be paid by VISA, Master Card, American Express, check, money order or cash. Make checks payable to Kenneth Vercammen PC. Fee is due by _____.

6. What we will do – Criminal ……

- Review and research necessary statutes and caselaw, contact the prosecutor, prepare defenses and determine mitigating factors.
  1. Telephone consultation with client;
  2. Office consultation with client;
  3. Preparation of letter of representation to Superior Court;
  4. Preparation of discovery letter to Prosecutor Office;
  5. Preparation of statement to provide legal services;
  6. Copies of all correspondence to Court and Prosecutor to client;
  7. Opening of file;
  8. Representation at Pre-Arraignment Conference;
  9. Representation at Arraignment;
  10. Representation at Scheduling Conference;
  11. Representation at Plea Agreement;
  12. Representation at Sentencing;
  13. Review of necessary Statutes and Case Law;
  14. Follow up with Prosecutor for Discovery;
  15. Prepare defense and mitigating factors;
  16. Miscellaneous correspondence, preparation and drafting of Pleadings =and legal documents;
  17. Review of Discovery;
  18. Travel to Superior Court;
  19. Representation in Superior Court;
  20. Motion to Suppress Evidence/Statements if applicable;
  21. Provide copy of Discovery and all correspondence from Prosecutor to client;
  22. Negotiating with Prosecutor;
  23. Preparation of sentencing letter;

7. Costs and Expenses. -

In addition to legal fees, you must pay the following costs and expenses up front:

……Experts' fees, court costs, investigator costs, witness fees, police discovery costs, messenger services, and other necessary expenses in this matter.

At end- what we will not do

8. Client's Responsibility- Please read carefully and follow instructions to help us help you:

1. You must fully cooperate with the Law Firm and provide all information relevant to the issues involved in this matter. You must fill out the Interview Sheet accurately. If you do not provide accurate information to the court and our law office, you may expose yourself to higher fines and penalties.
2. You must contact the Court with questions regarding Zoom, not the law office
3. Going to Court- Dress nice. You must bring all your original papers and entire file of all documents and letters you have received from our office, the Court, police and the any other entity connected to your case whenever you come to the law office, to court, or other appearances where both you and your attorney will be present. …..

9. **Request for Complete Discovery**

Email to To: Municipal Prosecutor

cc Court Administrator

RE: State v
Summons:
Offense:

Please enter my appearance for said defendant and a plea of "NOT GUILTY".
Demand is made that the Prosecutor and Police provide us with discovery pursuant to Rule 3:13-3, Rule 7:7-7(b). Please forward to me all documents which you have in your possession or which are in the possession of any law enforcement agency or the complainant pertaining to my client.
Please preserve any video and advise if there is a video of the stop or arrest. .. Demand is made for a speedy trial.

10. NOTICE OF Pretrial Motions CDS , DWI blood

Suppress Evidence
Miranda/Privilege
Exclude Lab Tests and Demand for notes and Operator Manuals
Discovery
Reciprocal Discovery
Defense experts:
Speedy trial
Notice of Objection to Lab Reports 2C:35-19
Punishment
Vagueness

11. Weekly email demand for discovery, then motion to compel discovery

12 Misc legal briefs to court and prosecutor on weekly basis

13 Zoom Hearing Notice

Please be advised your ONLINE hearing has been scheduled for: __

You must be promptly present with a phone and AT A LAPTOP and prepared to proceed at that time. the court will send you the zoom link a day or two before court date. Please provide the court now with your email. The court will send you the Zoom link, not the law office.

14. In person Hearing Notice

location:

Dear Client:

Please be advised your **hearing** has been scheduled for:

Date/Time:

You must be promptly present in court and prepared to proceed at that time.

You are reminded that every time you go to Court or come to our office, you should bring your entire file with all documents and letters you have received from our office, the Court, police, and anything else applicable to your case. In addition to bringing your file, we recommend that you bring a magazine or some light reading because the courts often take recesses and delays often occur.

When you arrive, please check in. Hearing times are often delayed. If by chance, I or the attorney in my office handling the hearing is not at the hearing room when you arrive, please do not panic.. ……..

15 Call police department while driving to court…… I have a case with Officer Smith, is he available?
? No, he is on disability or leave

16 End of Case Letter

Thank you for selecting our office

End of case letter

Dear

Thank you again for allowing our office to be of service to you. We hope you are satisfied with the outcome of this case. Email any questions you have.

We look forward to helping you and your family in the future. We welcome additional business and request referrals for:

1) Municipal Court
2) Wills, Power of Attorney, Living Wills and Estate Planning.
3) Traffic Tickets and DWI.
4) Criminal cases
5) Probate
6) Administration of Estates

If you have questions in the future, please email your questions to our office and include your cell number. We will call you back.
If you were happy, please write a good review on Google …

17 CLIENT QUESTIONNAIRE- End of Case

-Were you always treated courteously on the telephone when you called? _____

- Were you courteously treated by staff working on your file? _____

-Would you use our firm again if you had another legal problem? Please give us your comments. [use back of page if more space needed] _____

-Would you recommend our firm to a friend, relative or business associate who needed a lawyer? Please give us your comments.

_____

-May we use your comments as testimonial in our newsletter and website?
Yes _____ No _____

-Please rate how you feel about the overall quality of the legal services you received.
Excellent ____; Good ____; Adequate _____ Fair _____; Poor _____

-. Were you satisfied with the outcome of your case/matter?
Yes, because _____
No, because _____.

18 End of Case Client Questionnaire- Page 2- marketing

12. Suggest ways in which any of our services might be improved. Is there anything you feel we should have done for you that we did not do? What did you dislike about your experience, or the way we do things?

_____

13 Suggest additional services that you would like us to provide now or in the future: _____

14 Check items that you would like to receive from our firm:

_____ General brochure describing firm services _____ Lawyer bio info

__ 1. WHAT TO DO IN AN AUTOMOBILE ACCIDENT
__ 2. WILLS - Protecting Loved Ones.
__ 3. MUNICIPAL COURT.
__ 4. PERSONAL INJURY CASES.
__ 5. COOPERATING WITH YOUR ATTORNEY.
__ 6. TRAFFIC FINES AND PENALTIES.
__ 7. REAL ESTATE SALES.
__ 8. MVC POINTS AFTER TRAFFIC VIOLATIONS
__ 9. WORKER'S COMPENSATION
__ 10. STARTING YOUR OWN BUSINESS.
__11. PROBATE & ESTATE ADMINISTRATION
__12. LIVING WILLS and ADVANCE DIRECTIVES.
__13. COMPELLING CAR INSURANCE TO PAY BILLS
__14. CAR INSURANCE/ VERBAL THRESHOLD
__15. DWI PENALTIES.
__16. DRIVING WHILE SUSPENDED.
__17. POWER OF ATTORNEY.
__18. TRUSTS
__19. EXPUNGEMENT OF CRIMINAL ARRESTS
__20. FIRM BROCHURE AND WEBSITE

19. Thank you for Referral email to another attorney

TO: Attorney _____

REFERRAL OF: _____

Thank you very much for referring the above potential client to us. We are most appreciative of your expression of confidence in us. Client recommendation is a very important source of new clients to us. We are grateful for your recommendation.

We continue to accept probate, municipal court, criminal, and other serious legal matters. Any matter handled by this firm will be handled in an efficient and courteous manner after we are retained.

We shall do our best to justify your recommendation. If I can be of further service to you in the future please do not hesitate to contact me. Please visit our website at www.njlaws.com for articles and information of interest to attorneys.

Comments: _____

20. REFERRAL OUT TO ANOTHER ATTORNEY

To: Attorney _____

Type of Case: _____

Referral of _____

The above referenced individual has contacted me in a professional relationship. I have provided them with your name and phone number as a referral. **Please call them**. I am confident you can handle this matter in an efficient and courteous manner and provide excellent representation. Please advise me via fax whether this potential client contacts your office. Please advise via fax after four days. If appointment set, please fax back below.

If I can ever be of service to you in the future, please do not hesitate to contact me. We welcome referrals for:

- Criminal/ Municipal Court & DWI
- Probate , Estate Administration & Contested Litigation

Very truly yours,

KENNETH VERCAMMEN

Date and Time of Appointment: _____

Never Contacted our Office: _____

Canceled Appointment: _____

21. Recommend Expungements/Erase criminal charges

Dear :

If someone has been arrested or even had a private criminal complaint signed against them in the Criminal Court, they have a criminal record, even if the charges were dismissed.

Under NJSA 2C:52-1 et seq. past criminal arrests and convictions can be expunged/ erased under certain instances. We always recommend individuals hire an attorney to obtain an Expungements. The process for all expungement are held in the Superior Court.

The requirements are very formal. There can be a waiting period between 6 months up to 10 years after the criminal cases is finished.

When retaining the attorney, obtain a "certified disposition" of the court's decision, from the Court itself. Court costs and Legal fees for expungements range from $1,500- $2,500.

22 No Representation- [YOU ARE CRAZY OR WANT TO SUE THE POLICE]

Dear

Thank you for contacting my office in connection with the above matter. We will not be able to serve as your attorney in your matter. We are required by Supreme Court decisions to send you this letter to state we will not open a file and will not take any action.

You may have legal rights, responsibilities and remedies that you wish to pursue. Under New Jersey law formal suit must be filed within the applicable statute of limitations. You may be subject to the 90 day Tort claims act. There may be other statutory limitations which pertain to your matter. If a lawsuit is not filed within the statute of limitations, it will be forever barred. We are not advising you that you do not have a case, but that this office has decided it will not handle the case.

We recommend you speak with another attorney immediately to possibly retain an attorney to preserve any of your rights and responsibilities in your case. The phone number of the Middlesex County Bar, Lawyer Referral is 732-828-0053.

Questions:
fax questions to Ken V at 732-572-0030
and include your cell number for call back
after 6pm

24**Social Networking websites for new business and exposure** **and Profiles:**

Facebook

Google

YouTube

Twitter

Free Legal sites:

Avvo Legal rating

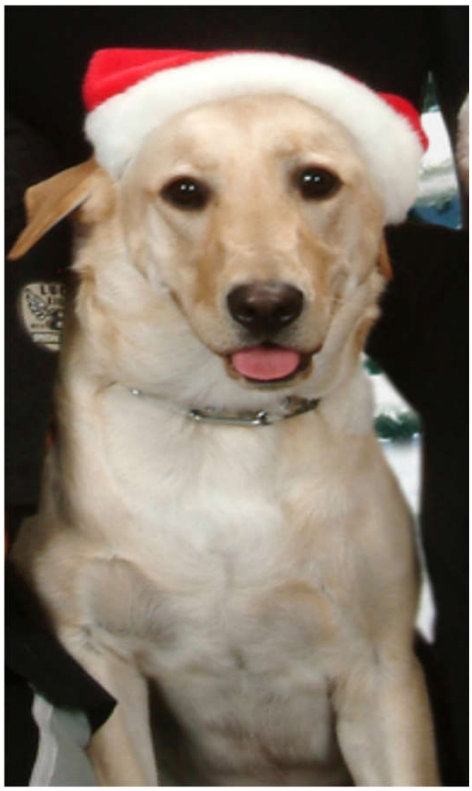
Justia Lawyer Directory

Non- legal sites:

Blogger is google owned blog-publishing service

Yelp for Business Owners

Vercammen
family dog
invites you
to the summer
Happy Hour
Headliner
August 9, 2025



25 b. If you want a copy of this PowerPoint, which is not in the materials, send an email to VercammenLaw@njlaws.com

For articles and information on Municipal court & criminal defense visit

www.njlaws.com

Major cases Criminal & Municipal Court 2023-2024
Compiled by Kenneth Vercammen Esq. Past Municipal Prosecutor

1. **NJ DWI Law penalties**
2. **Supreme Court DWI plea bargain are allowed per new DWI statute effective February 23, 2024**
3 **DRE in DWI cases requires a 12 step process**
State v. Olenowski
4 Officer could not walk onto driveway to look into hole in porch State v Ingram
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9 Exigent-circumstances exception to the warrant requirement does not justify the officer's search a black bag State v. Anthony Miranda
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15 Court should hold evidentiary hearing on Sup mt where bodycam deleted State v Jones
16 Unsolicited hospital statement by drunk driver admissible at trial State v. Tiwana
17 .Trial court should have carefully watched video where police did not wait before search State v Nieves
18 Smelling pot after valid stop permitted search pre change in law State v Baker
19 Limiting pull over for Tinted window given pipeline retroactivity State v Haskins
20 Police could do short inventory search at the scene of impounded DWI car State v Courtney

21 **For prior DWI between 2008-2016, Prosecutor must provide discovery indicating whether the defendant is a Dennis-affected defendant**
State v. Zingis 251 N.J. 502 (2024)

22 **Police could not follow suspected drunk driver into garage** **State v Mellody** 479 N.J. Super. 90 (App Div 2024)

23 Disorderly person defendants not excluded from Recovery/Drug court
State v Matrongolo 479 N.J. Super. 8 (App. Div 2024)

24 **Lane change vio here did not permit drug dog sniff**
State v Boone 479 N.J. Super. 193 (App. Div. 2024)

25

1 NJ DWI Law revised to permit certain plea bargains

The Governor signed changes to the DWI law (NJSA 39:4-50) which did three important things.

1. Permits plea bargaining in DWIs. Certified Municipal Court Attorneys can now better help clients

2. Allows an arrested defendant to get an interlock device immediately and then get credit for it if sentenced later.

3 extended the life of the 2019 penalty revisions which were due to expire.
Effective February 2024

The bill signed was **ASSEMBLY, No. 4800**
https://pub.njleg.state.nj.us/Bills/2022/A5000/4800_S2.PDF

1. N**ew DWI PENALTIES FOR OFFENSES**
as of February 20, 2024 [Dont drive drunk]
39:4-50(a)
First offense BAC of .08% but less than .10% (*per se*) or operation under the influence (observation)
Fine $250 to $400*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL Until interlock installed
interlock for Principal Vehicle 3 months
First offense BAC of .10% but less than .15%
Fine $300 to $500*

DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL Until interlock installed
lnterlock for Principal Vehicle 7 months to 1 year

First offense BAC of .15% or higher
Fine $300 to $500*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL 3 months**
lnterlock for Principal Vehicle During period of license forfeiture and for 12 to 15 months after license restored
Facility visitation Optional
Second Offense BAC of .08% or higher (*per se)* or under the influence of alcohol or drugs
Fine $500 to $1000*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC ln accord with treatment classification (usually 48 hours)
Jai l2 days to 90 days (Court may authorize 2 days served in IDRC)
Loss of DL 1 to 2 years**
lnterlock for Principal Vehicle During period of license forfeiture and for 2 to 4 years after license restored
Facility visitation Optional
Third/Subsequent Offense BAC of .08% of higher (*per se)* or under the influence of alcohol or drugs (observation)
Fine $1000*

DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC ln accord with treatment classification
Jail 6 months (Up to 90 days may be served in IDRC approved in-patient program)
Loss of DL 8 years**
lnterlock for Principal Vehicle During period of license forfeiture and for 2 to 4 years after
license restored
Facility visitation Optional
DUI-D Offense: Person convicted of a 1st offense operating or permitting another to operate under the influence of a narcotic, hallucinogenic or habit-producing drug is subject to license forfeiture for not less than 7 months or more than one year. Note: this provision, like all others, is subject to plea bargaining but the driver's license loss cannot be reduced below "6 months or greater" for a DUI-D first offense.
*Fine waived if: 1) defendant pre-installs IID before date of conviction; and 2) defendant's license was in good standing on the date of the offense up through the date of conviction.
**If defendant installs an IID before conviction and their license was in good standing from the date of the offense to date of conviction, then defendant is entitled to a credit of one day against any driver's license loss for every two days the IID has been installed. Exception: defendant is not entitled to any driver's license suspension credits if the case involved an MVA with SBI to another person (as defined by N.J.S.A. 2C:11-1

The bill provides that a person who has been arrested for certain driving while intoxicated (DWI) offenses may, upon arrest and prior to any conviction, voluntarily install an IID in one motor vehicle the person owns, leases, or principally operates, whichever the person most often operates, and request from the Motor Vehicle Commission (MVC) a driver's license with a notation stating that the person is not to operate a motor vehicle unless it is equipped with an IID.

The amended bill provides that a person who has been arrested for a first DWI offense whose blood alcohol concentration (BAC) was at least 0.08% but less than 0.10%, who was otherwise under the influence of intoxicating liquor, or whose BAC was 0.10% or higher who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is not to be subject to a fine as set forth under current law.

Under the bill, a person who has been arrested for a first DWI offense whose BAC was 0.15% or higher who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is to receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle under current law for every two days that the person has an IID installed and a driver's license with the appropriate notation and is not to be subject to a fine. The bill provides that a person is not entitled to the credit against the period that the person is required to forfeit the right to operate a motor vehicle if the violation of R.S.39:4-50 resulted in serious bodily injury to another person.

The bill further provides that a person who has been arrested for a second, third or subsequent DWI violation who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is to receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle under current law for every two days that the person has an IID installed and a driver's license with the appropriate notation and is not to be subject to a fine as set forth under current law. A person is not entitled to a credit against the period that the person is required to forfeit the right to operate a motor vehicle if the violation of R.S.39:4-50 resulted in serious bodily injury to another person.

Under the bill, the fine waiver for first, second, third, or subsequent offenses only applies if the person possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction

Further, the amended bill provides that notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement for a DWI or refusal to submit to a breathalyzer offense is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes (the State's motor vehicle code) or offense under Title 2C of the New Jersey Statutes (the State's criminal code).

The bill further provides that a person who enters into a plea agreement for operating or permitting another to operate a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug will be required to forfeit the right to operate a motor vehicle for a period of not less than six months.

Under the bill, in addition to any penalty imposed under current law, in sentencing a person convicted of a first violation of operating a commercial motor vehicle with a BAC of 0.04% or more whose BAC was at least 0.04% but less than 0.08%, the court is required to order the installation of an ignition interlock device in one non-commercial motor vehicle owned, leased, or principally operated by the offender, whichever the offender most often operates, which is to remain installed during the period that the person's commercial motor vehicle driving privilege is suspended.

1b **New Rules for Pre-Court Installation of Interlock Device of persons pending a DWI**

Drivers required to make multiple trips to MVC when they install interlock pre-court

Interlock of New Jersey **advises that MVC will require any offender who installs pre-court to return to Motor Vehicle a second time in order to start their sentence.**

MVC sees the new law as not giving credit to offenders for interlock time served prior to conviction. They contend that the sentence lengths post-conviction will remain the same. As a matter of process, they will need a start time for the interlock requirement and will need the offender to return to MVC with a second certificate from the interlock provider. Once they return to MVC with this certificate, the sentence of the judge will begin from that date. ***The following advice came from Jason Gooberman, President of Interlock of New Jersey:***

Here are the steps for the offender:

<u>Pre-Conviction</u>

1. **Bring ticket to interlock provider and have interlock installed.**
2. **Take pre-conviction installation certificate, work order and invoice, provided by interlock company to MVC and apply for restricted use license.**
3. **MVC will give paper document if approved and send actual license in the mail. The license is the proof of pre-court installation to be used at court.**

<u>Post-Conviction</u>

1. **Must get Order & Certification from the court.**
2. **Contact interlock provider and coordinate exchanging the Order & Certification for a post-conviction installation certificate to rectify that interlock is still installed.**
3. **Return to MVC and present the recertification. MVC will notate drivers record indicating that interlock is installed. The date of this event will mark the beginning of their interlock sentence.**

Without this return trip, their interlock time will not start - so if you have any clients who have installed pre-court and have been sentenced, let them know to reach out to their interlock provider for recertification and to make the trip to MVC in order to start their sentence.

More details at IDNJ.com

2 Supreme Court DWI plea bargain are allowed per new DWI statute effective February 23, 2024

AOC tried to oppose…

NJ Supreme Court officially removed Guideline 4 which had prohibited plea bargaining of DWIs in the Municipal Court. The Court order is expressed as comity with the Legislature's view in the recent DWI statute amendments. This changes 40 plus years on prohibition on DWI plea bargains. The Supreme Court recognized the new plea-bargaining statute which became effective on February 19, 2024. L.2023, c. 191, §§ 2, 9.

DWIs can possibly be plea bargained as long as there's a factual basis. Accordingly, in the interest of comity, the Court adopts the statement of policy in the amendment to N.J.S.A. 39:4-50 and withdraws Guideline 4.

3 DRE in DWI cases requires a 12 step process

State v. Olenowski 253 N.J. 133 (N.J. 2023)

The Supreme Court released an opinion in State v. Olenowski that dramatically changed New Jersey law. Prior to the decision, a court's evaluation of the scientific reliability of novel scientific devices or procedures had been decided under the century old decision in Frye v. United States, 293 F. 1013 (D.D. Cir. 1923).

Detecting and proving that a driver ingested and was under the influence of drugs while behind the wheel can be challenging. To enable such detection, law enforcement officials and researchers developed a twelve-step protocol:

(1) a breath alcohol test;
(2) an interview of the arresting officer;
(3) a preliminary examination and first pulse check;
(4) a series of eye examinations;
(5) four divided attention tests;

(6) a second examination and vital signs check;
(7) a dark room examination of pupil size and ingestion sites; (8) an assessment of muscle tone;
(9) a check for injection sites;
(10) an interrogation of the driver by the DRE;

(11) a final opinion, based on the totality of the examination, about whether the driver is under the influence of a drug or drugs; and

(12) a toxicological analysis.

4 Officer could not walk onto driveway to look into hole in porch **State v Ingram** 474 N.J. Super. 522 (App. Div. 2023)

The court considers whether a police officer, who walked onto the driveway of a home without permission or a warrant, was lawfully there when he observed illegal narcotics in a hole in the home's front porch.

Because the driveway was part of the home's curtilage, the court holds that the officer conducted an unlawful search and his subsequent observation of contraband in the hole in the porch did not satisfy the plain-view exception. Accordingly, the court reverses the trial court's denial of defendant's motion to suppress the seized contraband.

5 Suppression where dispatcher just assumed robber was black **State v Scott** 474 N.J. Super. 388 (App. Div. 2023)

Defendant contends he was subjected to discriminatory policing when he was stopped and frisked based on the be-on-the-lookout (BOLO) description of the person who committed an armed robbery in the vicinity minutes earlier. The BOLO alert described the robber as a Black male wearing a dark raincoat. However, the victim did not provide the race of the perpetrator when she reported the crime. The State acknowledges it does not know why the police dispatcher assumed the robber was Black.

The court address three issues of first impression. As a threshold matter, the court holds that decisions made and actions taken by a dispatcher can be attributed to police for purposes of determining whether a defendant has been subjected to unlawful discrimination in violation of Article I, Paragraphs 1 and 5 of the New Jersey Constitution.

Second, the court holds that "implicit bias" can be a basis for establishing a prima facie case of police discrimination under the burden-shifting paradigm adopted in State v. Segars, 172 N.J. 481 (2002). Reasoning that the problem of implicit bias in the context of policing is both real and intolerable, the court holds evidence that supports an

inference of implicit bias shifts a burden of production to the State to provide a race-neutral explanation. The State's inability to offer a race-neutral explanation for the dispatcher's assumption that the robbery was committed by a Black man constitutes a failure to rebut the presumption of unlawful discrimination under Segars.

Third, the court addresses whether and in what circumstances the independent source and inevitable discovery exceptions to the exclusionary rule apply to the suppression remedy for a violation of Article I, Paragraphs 1 and 5. After balancing the cost of suppression against the need to deter discriminatory policing and uphold public confidence in the judiciary's commitment to safeguard equal protection rights, the court concludes the independent source doctrine does not apply in these circumstances. That exception allows a reviewing court to redact unlawfully obtained information to determine whether the remaining information is sufficient to justify a search. The court concludes that any such redaction remedy would undermine the deterrence of discriminatory policing and send a message to the public that reviewing courts are permitted to essentially disregard an equal protection violation so long as police also relied on information that was lawfully disseminated. The court reasons that if simple redaction were permitted in these circumstances, the independent source exception might swallow the exclusionary rule.

With respect to the inevitable discovery doctrine, the court holds it may apply in racial discrimination cases only if the State establishes by clear and convincing evidence that the discriminatory conduct was not flagrant. Because the State concedes it does not know why the dispatcher assumed the robber was Black, it cannot meet that burden. The court, therefore, reverses the denial of defendant's motion to suppress.

6 Interlock issues post plea are to be resolved by court, not MVC State v. Coviello 252 N.J. 539 (N.J. 2023)

The sentencing court, and not the MVC, has the appropriate jurisdiction over defendant’s motion for sentencing credit concerning the IID requirement. Editor: This should also apply to IDRC issues

7 Statement to Rutgers Police suppressed where Miranda not correctly given State v. Bullock 253 N.J. 512 (2023)

Defendant’s statements in the courtyard and stationhouse were both properly suppressed. Under the totality of the circumstances, the courtyard statements must be suppressed because the Miranda warnings given in the courtyard were lacking and could not have apprised defendant of his rights such that any waiver

and agreement to speak to police was knowingly, voluntarily, and intelligently made. By the time defendant arrived at the police department and was given full Miranda warnings, he had already admitted to the very crime that the officers were investigating.

Defendant had "let the cat out of the bag" with his admissions, see State v. Carrion, 249 N.J. 253, 275-76 (2021), so the psychological pressure of having already confessed was not cured by the administration of Miranda warnings prior to the interview at the station.

8. Hearing on reliability of new DWI Alcotest Machine 9510 & stay on use at trial State v. Cunningham Order Docket #087913

The Supreme Court granted direct certification in State v. Cunningham, (A-38-22) to address the use of the new Alcotest 9510, which the State represents is being used as a replacement for the Alcotest 7110 in driving while intoxicated (DWI) cases due to the manufacturer's discontinuation of the 7110 device.

The Court imposed a limited stay of affected DWI matters, and appointed Judge Richard J. Geiger, J.A.D., to serve as a Special Master to develop a record, conduct hearings, and make findings and conclusions regarding the scientific reliability of the Alcotest 9510. This appointment is in addition to Judge Geiger's regular Appellate Division assignment and responsibilities.

The State having opened this matter with the Court to address the use of the new Alcotest 9510, which the State represents is being used as a replacement for the 7110 due to the manufacturer's discontinuation of the 7110 device and the unavailability of certain replacement parts that are necessary for the 7110's operation, and

ORDERED that the matter is remanded to the Special Master to develop a record, conduct hearings, and make findings and conclusions regarding the scientific reliability of the Alcotest 9510, which proceedings shall be scheduled on an accelerated basis; and it is further

ORDERED that the Special Master shall provide to the Court a written update on the remand proceeding every ninety (90) days until the remand proceedings have concluded; and it is further

ORDERED that, during the pendency of the remand proceedings and pending further order of this Court, a limited stay as imposed by this Order shall apply to all DWI matters involving the use of Alcotest 9510 machines in Municipal

Courts and appeals in the Law Division and Appellate Division of Superior Court; and it is further

ORDERED that DWI prosecutions and appeals based exclusively on the use of an Alcotest 9510 device (i.e., without other clinical or objective observational evidence), are stayed unless otherwise provided by this Order; …. **087913**

9 Exigent-circumstances exception to the warrant requirement does not justify the officer's search a black bag <u>State v. Anthony Miranda</u> 253 N.J. 461 (2023)

N.D. had apparent authority to consent to the officer's search of the storage trailer. However, the exigent-circumstances exception to the warrant requirement does not justify the officer's search of the black bag or his seizure of the weapons in that bag, and the denial of defendant's motion to suppress constituted error.

Defendant was indicted, and he moved to suppress the weapons found in the black bag in the storage trailer. The trial court denied defendant's motion, concluding that N.D. had consented to the search of the storage trailer and the seizure of the weapons found in the black bag in that trailer, and that the black bag containing the weapons was in plain view. The Appellate Division affirmed. The Court granted defendant's petition for certification. 251 N.J. 502 (2022).

HELD: N.D. had apparent authority to consent to the officer's search of the storage trailer. However, the exigent-circumstances exception to the warrant requirement does not justify the officer's search of the black bag or his seizure of the weapons in that bag, and the denial of defendant's motion to suppress constituted error.

1. The State bears the burden to prove that a warrantless search was constitutional because it falls within an exception to the warrant requirement. Here, the State invokes the doctrine of apparent authority to consent as the basis for Roxby's search of the storage trailer and the exigent-circumstances exception to justify the search of the black bag and the seizure of the weapons.

2. In certain settings, a person other than the defendant may validly consent to the search of the defendant's home or property. A third party's authority to consent rests on mutual use of the property by persons generally having joint access or control. An officer may, depending on the circumstances, rely on the apparent authority of a person consenting to a search. Apparent authority arises when a third party (1) does not possess actual authority to consent but appears to have such authority and (2) the law enforcement officer reasonably relies, from an

objective perspective, on that appearance of authority in view of the facts and circumstances known at the time of the search.

3. The Court reviews the information known to Roxby about N.D.'s nexus to the storage trailer when he entered and searched it, including N.D.'s affirmations that she also kept belongings in the trailer; text messages attributed to defendant suggesting defendant considered the residential trailer to be N.D.'s, that N.D. had lived in that trailer and the community longer than defendant had, and that he planned an imminent move out of her home; and N.D.'s access to the storage trailer. Considered in tandem, those factors support an objectively reasonable conclusion that N.D. had authority to consent to a search of the storage trailer.

4. That N.D. had apparent authority to consent to the search of the storage trailer does not resolve the question whether Roxby's search of the bag found inside that trailer and his seizure of the weapons were constitutional, however. A third party who has common authority over the premises might nevertheless lack common authority over the items therein.

5. Here, the State relies on the exigent-circumstances exception to the warrant requirement. That exception typically applies when there was an objectively reasonable basis to believe that lives might be endangered or evidence destroyed by the delay necessary to secure a warrant. The Court has identified a non-exclusive set of factors to be considered in determining whether exigent circumstances existed at the time of the disputed search. The determination is fact-sensitive and requires the court to assess the totality of the circumstances.

6. The first factor -- the seriousness of the crime under investigation -- favors the State's position in this case. Roxby was investigating allegations of domestic violence, "a serious crime against society." N.J.S.A. 2C:25-18. The second factor -- the urgency of the situation faced by the officers -- does not favor the State's position. When Roxby entered the storage trailer, defendant was under arrest and detained at the Police Department for processing pending his transfer to county jail. There was no realistic basis for concern that if Roxby paused to contact a judge and requested a warrant, defendant would be in a position to retrieve his weapons from the storage trailer pending the judge's issuance of that warrant. And if Roxby was called away for an emergency while he waited for a warrant, he could have ensured that the storage trailer was locked during his absence. The third factor -- the time that it would have taken to secure a warrant -- does not favor either party's position because the record includes no evidence of the amount of time that process would have taken. The fourth factor -- the threat that evidence would be destroyed or lost or people would be endangered unless immediate action was taken -- does not support a finding of exigent circumstances given that defendant was under arrest, and there is no evidence in the record that

he could have secured the assistance of a third party who had a key to the storage trailer. The fifth factor -- information that the suspect was armed and posed an imminent danger -- similarly weighs against a finding of exigency. The sixth factor -- the strength or weakness of the probable cause relating to the item to be searched or seized -- supports the State's position, given the statements of N.D. and her children.

7. Weighing those factors, the Court concludes that the State did not prove its claim that exigent circumstances justified the warrantless search of the black bag and the seizure of the weapons. Defendant's motion to suppress the weapons seized through that unlawful search should therefore have been granted. Because those weapons constituted the central evidence against defendant on the charge of unlawful possession of a weapon, defendant's conviction must be vacated.

REVERSED and REMANDED to the trial court.

10 Delayed warrantless searches of a person permitted where assault suspect removing substance from fingers State v. Torres 253 N.J. 485 (2023)

The Court endorses and applies the two-factor test of State v. Lentz, 463 N.J. Super. 54, 70 (App. Div. 2020), authorizing delayed warrantless searches of a person incident to that person's arrest so long as both (1) the delay itself and (2) the scope of the search were objectively reasonable. The totality of circumstances here establishes such reasonableness, particularly given the officers' observation and video footage showing that defendant appeared to be removing some substance from his fingers and rubbing his clothing while he was being interviewed, as well as the risk that biological evidence would dissipate during the delay while the warrant application was processed.

11. Police dog sniff rejected here State v. Smart 253 N.J. 156 (2023)

The circumstances giving rise to probable cause in this case were not "unforeseeable and spontaneous." Those circumstances included investigating previous information from the CI and concerned citizen about defendant, the vehicle, and narcotics trafficking in the area; lengthy surveillance of defendant and the vehicle; reasonable and articulable suspicion that defendant had engaged in a drug deal; and a positive canine sniff of the vehicle. The Court therefore affirms the order suppressing the physical evidence seized from the vehicle.

12 Detention of driver after initial stop on MDT unconstitutionally prolonged State v Williams 254 N.J. 8 (2023)

An MDT query revealing that a vehicle's owner has a suspended New Jersey driver's license provides constitutionally valid reasonable suspicion authorizing the officer to stop the vehicle -- unless the officer pursuing the vehicle has a sufficient objective basis to believe that the driver does not resemble the owner. If, upon stopping the vehicle, it becomes reasonably apparent to the officer that the driver does not look like the owner whose license is suspended, the officer must cease the vehicle's detention and communicate that the motorist is free to drive away without further delay.

Based on the specific facts presented here, the initial stop of the vehicle was valid because it was based on reasonable suspicion. However, the detention of defendants and the borrowed car was unconstitutionally prolonged after the officer recognized the driver was not the car's owner. The officer's admittedly uncertain ability to tell if he smelled marijuana was inadequate evidence of "plain smell" to justify a continuation of the stop and a search of the vehicle.

13 After Miranda warning issued defendant executed a knowing, intelligent, and voluntary waiver State v. Erazo
254 N.J. 277 (2023)

Defendant voluntarily went to the police station to give a witness statement. At the police station, defendant was interviewed twice. During his first interview, defendant was not in custody and thus not yet owed Miranda warnings. The factors set forth in O'Neill therefore do not need to be considered to assess the admissibility of the second interview. And before police interviewed defendant the second time, they properly administered Miranda warnings. With his rights in mind, defendant executed a knowing, intelligent, and voluntary waiver. During his second interview, defendant confessed. Neither the Fifth Amendment nor state common law calls for suppression of defendant's statements. A-16-22

14 Engine compartment of car could not be searched without warrant State v Cohen 254 N.J. 308 (2023)

Expanding the search to the engine compartment and trunk went beyond the scope of the automobile exception. Although the trooper smelled marijuana in the passenger compartment of the car, his initial search yielded no results and provided no justification "to extend the zone of the . . . search further than the persons of the occupants or the interior of the car." State v. Patino, 83 N.J. 1, 14-15 (1980). As a result, the seized evidence should be suppressed.

15 Court should hold evidentiary hearing on Sup mt where bodycam deleted State v Jones 475 N.J. Super. 520 (App. Div. 2023)

The court granted defendant Shahaad I. Jones leave to appeal from an order denying his motion to suppress evidence — a handgun and large capacity magazine — seized without a warrant from his person. The court finds the motion court erred by deciding the suppression motion without an evidentiary hearing because defendant's brief submitted in accordance with Rule 3:5-7(b) raised fact issues as to whether the warrantless search of defendant was justified under the plain view exception to the warrant requirement.

The court also determined the motion court erred by concluding the statutory rebuttable presumption under N.J.S.A. 40A:14-118.5(q) — that, where law enforcement either fails to adhere to the statutory retention requirements found in N.J.S.A. 40A:14-118.3 to -118.5 for body worn camera (BWC) recordings, or intentionally interferes with a BWC's ability to accurately capture audio and video recordings, the law presumes exculpatory evidence was destroyed or not captured — applies only at trials and not at suppression hearings. The court finds the plain language of N.J.S.A. 40A:14-118 does not support the motion court's determination and holds that because the statute expressly states the presumption is applicable in "criminal prosecutions," the rebuttable presumption applies in suppression hearings.

The court reverses the motion court's order denying defendant's suppression motion and remands for further proceedings, including for a determination of whether defendant demonstrates an entitlement to the rebuttable presumption under N.J.S.A. 40A:14-118.5(q), and, if so, whether the State rebuts the presumption.

16 Unsolicited hospital statement by drunk driver admissible at trial
State v. Tiwana 256 N.J. 33 (2023)

Defendant Driver was in custody at the hospital in light of the police presence around her bed area. But no interrogation or its functional equivalent occurred before her spontaneous and unsolicited admission. Miranda warnings were therefore not required, and defendant's statement -- that she "only had two shots prior to the crash" -- is admissible at trial.

The Court considers whether an investigating detective's self-introduction to defendant Amandeep K. Tiwana at her bedside in the hospital following a car crash initiated a custodial interrogation or its functional equivalent warranting the administration of warnings under Miranda v. Arizona, 384 U.S. 436 (1966).

On April 28, 2020, defendant, while driving in Jersey City, struck a police officer and collided with two police cruisers. Defendant and three injured officers were transported to Jersey City Medical Center. Defendant's blood alcohol

content was 0.268%, three times the legal limit. Detective Anthony Espaillat of the Regional Collision Investigation Unit of the Hudson County Prosecutor's Office arrived at the hospital and spoke first to the injured officers in the emergency room.

Two uniformed police officers were stationed outside the curtain separating defendant's bed from other patients. Detective Espaillat walked up to defendant's bed, introduced himself as a detective with the Hudson County Prosecutor's Office, and explained that he was assigned to investigate the accident. Espaillat testified that, as soon as he had spoken, defendant immediately complained of chest pain and said "she only had two shots prior to the crash." Espaillat directed defendant not to make any other statements. He clarified that he did not come to the hospital to ask her questions and that he wanted to interview her at a later date at the Prosecutor's Office. The entire interaction lasted "less than five minutes." The next day, defendant went to the Prosecutor's Office and invoked her Miranda rights.

A grand jury indicted defendant for three counts of assault by auto. Pretrial, the State moved to admit defendant's statement at the hospital. Following an evidentiary hearing, the trial court denied the State's motion and the Appellate Division affirmed. Both courts found that a custodial interrogation occurred at the hospital and the detective's failure to give Miranda warnings rendered defendant's statement inadmissible. The Court granted leave to appeal. 253 N.J. 431 (2023).

HELD: Defendant was in custody at the hospital in light of the police presence around her bed area. But no interrogation or its functional equivalent occurred before her spontaneous and unsolicited admission. Miranda warnings were therefore not required, and defendant's statement -- that she "only had two shots prior to the crash" -- is admissible at trial.

1. To protect a suspect's right against self-incrimination, law enforcement officers must administer Miranda warnings when a suspect is in police custody and subject to interrogation. The parties do not dispute that defendant was in custody at the hospital. The sole issue is whether Detective Espaillat interrogated defendant in violation of his duty to first inform her of her right to remain silent.

2. The United States Supreme Court in Rhode Island v. Innis clarified that "interrogation" for Miranda purposes occurs when a suspect "is subjected to either express questioning or its functional equivalent," which may include "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." 446 U.S. 291, 300-01 (1980). But the Supreme Court stressed that the police "cannot be held accountable for the unforeseeable results of their words or actions." Id. at 301-02.

3. The Court reviews several New Jersey cases applying the Innis interrogation standard. For example, in State v. Hubbard, the Court concluded that the defendant was interrogated by police because "the targeted questions reflect[ed] a clear attempt on the part of the detective to cause defendant to incriminate himself." 222 N.J. 249, 272 (2015). However, in State v. Beckler, the Appellate Division upheld the admissibility of the defendant's custodial statements because they "were unsolicited, spontaneous, and not made in response to questioning or its functional equivalent." 366 N.J. Super. 16, 25 (App. Div. 2004).

4. Here, defendant was not subject to a custodial interrogation or its functional equivalent when she stated that she "only had two shots prior to the crash." No questioning occurred and Espaillat could not have foreseen that his introduction was reasonably likely to elicit an immediate incriminating response. Rather, defendant spontaneously made an unsolicited incriminating statement while in custody. The trial court and Appellate Division relied heavily on the three police officers in or just outside defendant's bed area at the time Espaillat introduced himself. That fact alone may establish custody, but it does not establish interrogation.

REVERSED and REMANDED to the trial court.

decided November 20, 2023

SOLOMON, J., writing for a unanimous Court.

17. Trial court should have carefully watched video where police did not wait before search State v Nieves 476 N.J. Super. 405 (App Div. 2024)

In this appeal from an order denying defendant's motion to suppress evidence seized following the 5:00 a.m. execution of a knock-and-announce search warrant at a residence, the court finds the law enforcement officers did not wait a reasonable period after knocking and announcing their presence before forcibly breaching and entering the home's front door.

The court determines that based on the circumstances presented, the officers' forcible entry into the home after waiting less than five seconds after knocking and announcing their presence was unreasonable and rendered the subsequent search of the home and seizure of evidence unconstitutional. The court determines the exclusionary rule requires suppression of the evidence, reverses the order denying the suppression motion, and remands for further proceedings.

18 Smelling pot after valid stop permitted search pre change in law State v Baker 478 N.J. Super. 116 (App. Div. 2024)

In this matter, the court considers whether the trial court properly denied defendant's motion to suppress evidence seized after a search of the vehicle defendant was operating following a traffic stop. When the officer approached defendant's vehicle, he noticed a burnt smell of marijuana emanating from it. The officer did not intend to search the vehicle at that point. However, after the dispatcher informed the officer defendant had an outstanding warrant necessitating defendant's arrest, and the officer smelled a perceptible odor of raw marijuana on defendant's person as they sat together in the patrol car, the officer decided to search the vehicle.

The court concludes that the officer's testimony regarding the odors established probable cause for the subsequent search of the vehicle. In addition, the finding of probable cause arose in unforeseeable and spontaneous circumstances. There were not two stops as argued by defendant. The discovery of the warrant and new smell emanating from defendant's person permitted the officer to continue the investigation. The search was permissible under the automobile exception to the warrant requirement as articulated in State v. Witt, 223 N.J. 409 (2015). The court affirms the order denying defendant's suppression motion.

19 Limiting pull over for Tinted window given pipeline retroactivity State v Haskins 477 N.J. Super. 630 (App. Div. 2024)

In this appeal, the court held that the rule announced in State v. Smith, 251 N.J. 244, 253 (2022), that "reasonable and articulable suspicion of a tinted windows violation arises only when a vehicle's front windshield or front side windows are so darkly tinted that police cannot clearly see people or articles within the car," should be afforded pipeline retroactivity. The court also determined a defendant who had not filed a notice of appeal when a retroactive decision was issued, but was subsequently granted leave to file as within time under Rule 2:4-4 and State v. Molina, 187 N.J. 531, 535-36 (2006), is deemed within the "pipeline" for retroactivity purposes. A-1767-22

20 Police could do short inventory search at the scene of impounded DWI car State v Courtney 477 N.J. Super. 630 (App Div. 2024)

In State v. Witt, our Supreme Court held police cannot conduct a search pursuant to the automobile exception to the warrant requirement once a vehicle has been towed away and impounded. 223 N.J. 409, 448-49 (2015). John's Law generally requires police to impound a vehicle for at least twelve hours when the driver is arrested for driving while intoxicated (DWI). This case addresses the novel question of whether police may conduct a search under the automobile exception when they are required to impound a vehicle pursuant to John's Law,

but the vehicle has yet to be removed from the scene of the stop. A-3844-22 published

The trial judge suppressed a handgun found under the front passenger seat, reasoning that because the officers were required to impound the vehicle, they were also required to obtain a search warrant even though the search occurred roadside. After considering the plain text and rationale of Witt, the court reverses the suppression order, holding the inherent exigency justifying a warrantless search at the scene continues to exist so long as the detained vehicle remains at the location of the stop.

The court reasons the inherent exigency is not abated by the fact the vehicle will eventually be removed from the scene. Nor is such exigency abated when the decision is made to remove the vehicle, regardless of whether the decision is made in the exercise of police discretion or in compliance with a statutory impoundment mandate.

21 **Leaving suitcase behind in Penn station permitted police to search without warrant State v. Gartrell** 256 N.J. 241 (2024)

Defendant's possessory or ownership interest in the suitcase ceased when he fled police outside Penn Station and deliberately left his suitcase behind in a public place with no evidence of anyone else's interest in the bag. Because the State has demonstrated by a preponderance of the evidence that the suitcase was abandoned, defendant is without standing to challenge its seizure and search.

22 **Police could not follow suspected drunk driver into garage State v Mellody** 479 N.J. Super. 90 (App Div 2024)

The court reverses defendant's driving while intoxicated (DWI) conviction because it was based on evidence obtained by a police officer following his unlawful entry into defendant's garage. The court remands for the Law Division judge to determine whether defendant's careless driving conviction can be sustained based on information learned before the officer unlawfully crossed the threshold of defendant's home.

The court addresses the circumstances in which a police officer may enter a suspect's residence in connection with a drunk or careless driving investigation. The court holds that while police have the authority to perform various "community caretaking" functions—such as determining whether a suspected drunk driver needs medical attention—they may not make a warrantless entry into a suspect's home to execute an investigative detention without consent

or exigent circumstances. The court holds this rule applies to defendant's garage.

The court also holds this was not a fleeting or de minimus entry. The officer entered the garage to execute an investigative detention, that is, to seize defendant. The court stresses that even the brief entry of the home to effectuate the seizure of a resident is a significant constitutional intrusion. The court ultimately concludes the State failed to prove by a preponderance of the evidence the officer lawfully entered the garage to render emergency aid under the exigent circumstances exception.

23 Disorderly person defendants not excluded from Recovery/Drug court
State v Matrongolo 479 N.J. Super. 8 (App. Div 2024)

In this appeal, the court held individuals convicted of a disorderly persons or petty disorderly persons offense are not categorically excluded from Recovery Court under Track Two based on the classification of their conviction. The court first found the matter justiciable despite the defendant's death and then rejected the rationale that Recovery Court is available only to those convicted of a "crime," which disorderly persons and petty disorderly persons offenses are not under our Criminal Code.

24 **Lane change vio here did not permit drug dog sniff**
State v Boone 479 N.J. Super. 193 (App. Div. 2024)

The court reversed the denial of a motion to suppress drug evidence discovered by a detective following a dog sniff after an admitted pretext stop. Although not questioning the detective's good faith or impugning the trial court's finding that he was a credible witness, the court finds neither is enough to justify this stop. "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." State v. Scriven, 226 N.J. 20, 37 (2016). The detective failed to offer facts sufficient, as a matter of law, to allow the court to determine he possessed a reasonable articulable suspicion that Boone failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b). See State v. Woodruff, 403 N.J. Super. 620, 627-28 (Law Div. 2008).

The appeals court did not reach defendant's argument that the automobile exception did not apply because the circumstances giving rise to probable cause were not spontaneous and unforeseeable as required under State v. Witt, 223 N.J. 409, 447-48 (2015). See State v. Smart, 253 N.J. 156, 171 (2023).

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winning book Criminal Law Forms and often lectures to trial lawyers of the American Bar Association, NJ State Bar Association and Middlesex County Bar Association. As the Past Chair of the Municipal Court Section he has served on its board for 10 years. He is admitted to the Supreme Court of the United States.

Author: Drug and DWI Defense - Forms and Pleadings (2021)
New Jersey Specific Bound book with Forms for NJSBA

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Ken Vercammen is a highly regarded lecturer on both Municipal Court/ DWI and Estate/ Probate Law issues for the NJICLE- New Jersey State Bar Association, American Bar Association, and Middlesex County Bar Association. His articles have been published by NJ Law Journal, ABA Law Practice Management Magazine, YLD Dictum, GP Gazette and New Jersey Lawyer magazine. He was a speaker at the ABA Annual meeting program “Handling the Criminal Misdemeanor and Traffic Case” and serves as is the Editor in Chief of the NJ Municipal Court Law. For nine years he served as the Cranbury Township Prosecutor and also was a Special Acting Prosecutor in nine different towns. Ken has successfully handled over one thousand Municipal Court and Superior Court matters in the past 35 years.

His private practice has devoted a substantial portion of professional time to the preparation and trial of litigated matters. Appearing in Courts throughout New Jersey several times each week on Criminal and Municipal Court trials, civil and contested Probate hearings. Ken also serves as the Editor of the popular legal website and related blogs. In Law School he was a member of the Law Review, winner of the ATLA trial competition and top ten in class.

Throughout his career he has served the NJSBA in many leadership and volunteer positions. Ken has testified for the NJSBA before the Senate Judiciary Committee to support changes in the DWI law to permit restricted use driver license and interlock legislation. Ken also testified before the Assembly Judiciary Committee in favor of the first-time criminal offender “Conditional Dismissal” legislation which permits dismissal of some criminal charges. In his private life he has been a member of the NJ State champion Raritan Valley Road Runners

master's team and is a 4th degree black belt.

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Fall Municipal Court Law Review 2024

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16 Will preparation online by a real NJ Attorney without having to travel to a Law Office

1 For prior DWI between 2008-2016, Prosecutor must provide discovery indicating whether the defendant is a Dennis-affected defendant

State v. Zingis 251 N.J. 502 (2024)

In State v. Cassidy, 235 N.J. 482, 486 (2018), the Court addressed the consequences of then-Sergeant Marc Dennis's certification of improperly conducted calibration checks of certain Alcotest machines "used to determine whether a driver's blood alcohol content is above the legal limit," which called into question over 20,000 Alcotest results. In this appeal, the Court addresses issues arising from the notification procedure required after Cassidy.

In August 2018, defendant Thomas Zingis was charged with careless driving and driving while under the influence (DWI). He had a prior DWI conviction in April 2012. In December 2018, a trial was held in the municipal court and Zingis was found guilty of DWI. The State requested that Zingis be sentenced as a second offender due to his April 2012 DWI conviction. Relying on Cassidy, Zingis argued that his first conviction should be disregarded for sentencing purposes because the State failed to prove beyond a reasonable doubt that his 2012 DWI conviction was not predicated on a Dennis-calibrated Alcotest. The State responded by asserting that (1) Camden was not one of the Dennis-affected counties, and (2) Zingis's failure to receive notice, consistent with this Court's order in Cassidy, was proof that he was not a Dennis-affected defendant.

The municipal court accepted the prosecutor's representation and sentenced Zingis as a second DWI offender. On appeal, the Law Division also found Zingis guilty of DWI and rejected his request to be sentenced as a first-time offender.

The Appellate Division affirmed Zingis's conviction but vacated the enhanced sentence. 471 N.J. Super. 590, 608 (App. Div. 2022). The Appellate Division held that the State failed to prove beyond a reasonable doubt that Zingis's 2012 DWI conviction was not based on an inadmissible Alcohol Influence Report (AIR). Id. at 607. The Court granted certification and remanded the matter to a Special Adjudicator for a plenary hearing on two questions: (1) which counties were affected by Dennis's conduct, and (2) what notification was provided to defendants affected by Dennis's conduct. 251 N.J. 502 (2022).

The Special Adjudicator filed a comprehensive 370-page report detailing his findings of fact and conclusions of law, which the Court summarizes. The parties largely agree with the Special Adjudicator's findings and conclusions. Relevant to

this appeal, there are two areas of disagreement: (1) the availability of Exhibit S-152 -- a 180-page Excel Spreadsheet that sets forth solution changes and calibrations on all Alcotest Instruments in New Jersey from November 5, 2008 through June 30, 2016 -- and (2) the proper procedure for challenging a prior Dennis-affected DWI conviction when facing enhanced sentencing on a subsequent DWI.

The State asks the Court to accept the Special Adjudicator's factual findings and recommendations with two exceptions: (1) Exhibit S-152's availability should be limited; and (2) the validity of a prior DWI should be pursued through PCR in the municipal court where the prior conviction occurred and not be litigated at sentencing for a successive DWI. The State agrees with the Special Adjudicator that prior to seeking an enhanced DWI sentence, it must inform defendants "that a prior DWI conviction it intends to" rely on "was potentially affected by Dennis's malfeasance." The State contends, however, that this notification obligation extends only to cases confirmed to be Dennis-affected cases, not those in which there is no known evidence that would justify overturning convictions on PCR.

HELD: The Court now resolves those limited areas in which the parties could not agree regarding the implementation of the Special Adjudicator's findings and legal conclusions: (1) the proper procedure for challenging a prior Dennis-affected DWI conviction when facing enhanced sentencing on a subsequent DWI; and (2) the appropriate availability of Exhibit S-152.

1. During the initial conference for a DWI matter, the court shall inquire whether the pending matter represents the first or subsequent DWI for a defendant. If the record reflects that the defendant has a prior conviction for DWI, the prosecutor must inform the court, defendant, and defense counsel whether it occurred between the critical dates of November 5, 2008 and April 2016.

If so, the court must then schedule a discovery conference for the State to fulfill its obligation and provide to the defendant and counsel, as well as the court, discovery indicating whether the defendant is a Dennis-affected defendant. The prosecutor will accomplish this by using the summons number from the earlier offense to search Exhibit S-152, which will be redacted to include only non-personal identifying information. Once the corresponding entry is located within Exhibit S-152, the prosecutor is to "copy and paste" that row of data into a new document. The AIR number from that entry must then be compared against the Dennis Calibration Repository, which shall be made publicly available by placing it on a State website and shall also be summarized in a Dennis AIR Summary sheet. If the State determines that the defendant's prior offense involved a Dennis-affected Alcotest Instrument that produced an evidential BAC reading, corroborated by Exhibit S-152 and the Dennis AIR Summary sheet,

Judges should afford the defendant a reasonable amount of time to decide whether to challenge the prior conviction. If the defendant wishes to challenge that earlier conviction, the defendant shall do so by filing for PCR in the jurisdiction of the previous conviction. If the defendant, after being made aware of the existence of a Dennis-affected matter, chooses to proceed without challenging the earlier conviction, the court will inquire on the record that the defendant's decision is knowing and voluntary, and the matter may proceed in the usual course. The Court calls on judges to resolve PCRs and related new matters as expeditiously as possible. The Court provides detailed guidance on all of these points.

2. With regard to Exhibit S-152, the Court adopts a process that balances the State's concerns for privacy with defendants' due process need for notification. Once a summons number is cross-referenced in Exhibit S-152, it shall be provided to the defendant and defense counsel in discovery. Through that process, the defendant and counsel can see the date and location of offense, summons number, and the defendant's name. The prosecutor must then use the summons number to search Exhibit S-152. Therefore, Exhibit S-152 in its newly redacted form, excluding all personal identifiers, must be publicly released on the State's website. The prior disposition, along with the complete row of data from Exhibit S-152 and the Dennis AIR Summary sheet, together will be deemed proof beyond a reasonable doubt of whether a defendant's prior DWI conviction is a Dennis-affected matter.

3. The Court adopts the remainder of the Special Adjudicator's findings, which are supported by substantial credible evidence in the record.

2 Police could not follow suspected drunk driver into garage <u>State v Mellody</u> 479 N.J. Super. 90 (App Div 2024)

The court reverses defendant's driving while intoxicated (DWI) conviction because it was based on evidence obtained by a police officer following his unlawful entry into defendant's garage. The court remands for the Law Division judge to determine whether defendant's careless driving conviction can be sustained based on information learned before the officer unlawfully crossed the threshold of defendant's home.

The court addresses the circumstances in which a police officer may enter a suspect's residence in connection with a drunk or careless driving investigation. The court holds that while police have the authority to perform various "community caretaking" functions—such as determining whether a suspected drunk driver needs medical attention—they may not make a warrantless entry into a suspect's home to execute an investigative detention without consent

or exigent circumstances. The court holds this rule applies to defendant's garage.

The court also holds this was not a fleeting or de minimus entry. The officer entered the garage to execute an investigative detention, that is, to seize defendant. The court stresses that even the brief entry of the home to effectuate the seizure of a resident is a significant constitutional intrusion. The court ultimately concludes the State failed to prove by a preponderance of the evidence the officer lawfully entered the garage to render emergency aid under the exigent circumstances exception.

3 Disorderly person defendants not excluded from Recovery/Drug court
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In this appeal, the court held individuals convicted of a disorderly persons or petty disorderly persons offense are not categorically excluded from Recovery Court under Track Two based on the classification of their conviction. The court first found the matter justiciable despite the defendant's death and then rejected the rationale that Recovery Court is available only to those convicted of a "crime," which disorderly persons and petty disorderly persons offenses are not under our Criminal Code.

4 No adverse inference solely from defendant's invocation of his Fifth Amendment right to not testify in an FRO hearing.
T.B. vs I.W.

Defendant appealed from a final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based upon predicate acts of sexual assault, N.J.S.A. 2C:14-2, lewdness, N.J.S.A. 2C:14-4, and harassment, N.J.S.A. 2C:33-4. He contended the trial court failed to make factual or credibility findings, and abused its discretion in entering an FRO after drawing an adverse inference when he chose not to testify. The court concluded the trial court failed to make sufficient findings of fact and conclusions of law, vacated the FRO, reinstated the amended temporary restraining order (TRO), and remanded for a new FRO hearing before a different judge.

Additionally, the court concluded, as a matter of law, it is not appropriate for a trial court to draw an adverse inference solely from defendant's invocation of his Fifth Amendment right to not testify in an FRO hearing. Despite the remedial nature of the PDVA, and the statute's language insulating a defendant's testimony from use in a criminal proceeding relating to the same act, a defendant's election to not testify cannot give rise to an adverse inference in an FRO hearing. A-3899-22

5 Lane change vio here did not permit drug dog sniff

State v Boone 479 N.J. Super. 193 (App. Div. 2024)

The court reverses the denial of a motion to suppress drug evidence discovered by a detective following a dog sniff after an admitted pretext stop. Although not questioning the detective's good faith or impugning the trial court's finding that he was a credible witness, the court finds neither is enough to justify this stop. "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." State v. Scriven, 226 N.J. 20, 37 (2016). The detective failed to offer facts sufficient, as a matter of law, to allow the court to determine he possessed a reasonable articulable suspicion that Boone failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b). See State v. Woodruff, 403 N.J. Super. 620, 627-28 (Law Div. 2008). We do not reach defendant's argument that the automobile exception did not apply because the circumstances giving rise to probable cause were not spontaneous and unforeseeable as required under State v. Witt, 223 N.J. 409, 447-48 (2015). See State v. Smart, 253 N.J. 156, 171 (2023). Docket 09-04-24

6 State may be compelled to provide field and health reports of narcotics detection canines

State v Morgan

This appeal presents a question of first impression regarding when the State may be compelled to provide field and health reports of narcotics detection canines in accordance with the Supreme Court's holding in Florida v. Harris, 568 U.S. 237 (2013). Defendant was indicted with second-degree unlawful possession of a weapon, fourth-degree possession of hollow nose bullets, third-degree possession of a controlled dangerous substance, and second-degree certain persons not to have a weapon. The Law Division denied defendant's motion to compel the State to provide discovery of records related to a narcotics detection canine used to conduct a sniff of the vehicle and whose positive alert gave the basis for probable cause to conduct a full search.

Upon granting leave to appeal, the court concludes that under Harris, the canine's field and health records are not per se irrelevant to reliability and probable cause determinations and therefore, the trial court should have first heard the State's motion challenging the expert before denying the defendant's motion for discovery.

Because the records may be deemed relevant by the trial court, the court reverses and remands for consideration of the State's motion to bar defendant's expert using the Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) standard adopted by our Supreme Court for criminal cases in State v. Olenowski, 253 N.J. 133, 151 (2023). App Div- A-0499-23

7 Smell of marijuana emanating from the passenger compartment provided probable cause to search the entire interior for marijuana, which includes the glove box.
State v Wilson 478 N.J. Super. 564 (App Div. 2024)

The court reverses an interlocutory Law Division order suppressing handguns and a large-capacity ammunition magazine police found in a locked glove box during a traffic stop. The case presents two questions of first impression under New Jersey law. Are police permitted to search a glove box under the automobile exception based solely on the odor of marijuana emanating generally from the passenger compartment without first determining whether the odor is coming specifically from the vicinity of the glove box? And does the New Jersey automobile exception extend to a glove box that is intentionally locked, manifesting a heightened expectation of privacy in its contents?

Applying principles explained in State v. Cohen, 254 N.J. 308, 328 (2023), the court holds that the smell of marijuana emanating from the passenger compartment provided probable cause to search the entire interior for marijuana, which includes the glove box, since that was a place within the passenger compartment where marijuana could be concealed. The court declines to create a new rule that would essentially require police to follow a scent trail or pre-inspect containers in the passenger compartment before opening them.

The court likewise rejects defendants' contention that by locking the glove box, defendants manifested a heightened expectation of privacy comparable to that which applies to a home, taking the glove box outside the realm of the automobile exception. The court also holds it does not matter under the automobile exception whether the contents of the locked glove box were accessible to the vehicle occupants. In this respect, the automobile exception is different from the search-incident-to-arrest exception, which limits the scope of a warrantless search to areas "within [the arrestees'] immediate control," see Chimel v. California, 395 U.S. 752, 763 (1969).

Finally, the court rules that by using a key to open the locked glove box, rather than breaking it open, the "intensity" with which the warrantless search was executed was eminently reasonable

8. N**ew DWI PENALTIES FOR OFFENSES**
as of February 20, 2024 [Dont drive drunk]
39:4-50(a)
First offense BAC of .08% but less than .10% (*per se*) or operation under the influence (observation)
Fine $250 to $400*

DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL Until interlock installed
interlock for Principal Vehicle 3 months
First offense BAC of .10% but less than .15%
Fine $300 to $500*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL Until interlock installed
lnterlock for Principal Vehicle 7 months to 1 year
First offense BAC of .15% or higher
Fine $300 to $500*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC 12 to 48 hours
Jail Up to 30 days (not mandatory)
Loss of DL 3 months**
lnterlock for Principal Vehicle During period of license forfeiture and for 12 to 15 months after license restored
Facility visitation Optional
Second Offense BAC of .08% or higher (*per se)* or under the influence of alcohol or drugs
Fine $500 to $1000*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33

SNSF $75
VCCO $50
IDRC ln accord with treatment classification (usually 48 hours)
Jai l2 days to 90 days (Court may authorize 2 days served in IDRC)
Loss of DL 1 to 2 years**
lnterlock for Principal Vehicle During period of license forfeiture and for 2 to 4 years after license restored
Facility visitation Optional
Third/Subsequent Offense BAC of .08% of higher (*per se)* or under the influence of alcohol or drugs (observation)
Fine $1000*
DWI Surcharge $125
DDEF Surcharge $100
Assessments $6
Court costs Up to $33
SNSF $75
VCCO $50
IDRC ln accord with treatment classification
Jail 6 months (Up to 90 days may be served in IDRC approved in-patient program)
Loss of DL 8 years**
lnterlock for Principal Vehicle During period of license forfeiture and for 2 to 4 years after
license restored
Facility visitation Optional
DUI-D Offense: Person convicted of a 1st offense operating or permitting another to operate under the influence of a narcotic, hallucinogenic or habit-producing drug is subject to license forfeiture for not less than 7 months or more than one year. Note: this provision, like all others, is subject to plea bargaining but the driver's license loss cannot be reduced below "6 months or greater" for a DUI-D first offense.
*Fine waived if: 1) defendant pre-installs IID before date of conviction; and 2) defendant's license was in good standing on the date of the offense up through the date of conviction.
**If defendant installs an IID before conviction and their license was in good standing from the date of the offense to date of conviction, then defendant is entitled to a credit of one day against any driver's license loss for every two days the IID has been installed. Exception: defendant is not entitled to any driver's license suspension credits if the case involved an MVA with SBI to another person (as defined by N.J.S.A. 2C:11-1

9 **New Rules for Pre-Court Installation of Interlock Device of persons pending a DWI**

Drivers required to make multiple trips to MVC when they install interlock pre-court

Interlock of New Jersey **advises that MVC will require any offender who installs pre-court to return to Motor Vehicle a second time in order to start their sentence.**

MVC sees the new law as not giving credit to offenders for interlock time served prior to conviction. They contend that the sentence lengths post-conviction will remain the same. As a matter of process, they will need a start time for the interlock requirement and will need the offender to return to MVC with a second certificate from the interlock provider. Once they return to MVC with this certificate, the sentence of the judge will begin from that date. ***The following advice came from Jason Gooberman, President of Interlock of New Jersey:***

Here are the steps for the offender:

<u>Pre-Conviction</u>

1. **Bring ticket to interlock provider and have interlock installed.**
2. **Take pre-conviction installation certificate, work order and invoice, provided by interlock company to MVC and apply for restricted use license.**
3. **MVC will give paper document if approved and send actual license in the mail. The license is the proof of pre-court installation to be used at court.**

<u>Post-Conviction</u>

1. **Must get Order & Certification from the court.**
2. **Contact interlock provider and coordinate exchanging the Order & Certification for a post-conviction installation certificate to rectify that interlock is still installed.**
3. **Return to MVC and present the recertification. MVC will notate drivers record indicating that interlock is installed. The date of this event will mark the beginning of their interlock sentence.**

Without this return trip, their interlock time will not start - so if you have any clients who have installed pre-court and have been sentenced, let them know to reach out to their interlock provider for recertification and to make the trip to MVC in order to start their sentence.

More details at IDNJ.com

UNREPORTED cases

11 App Div gives harsher penalty where illegal sentence

***State v. Chopp*,** Defendant appealed the denial of her de novo appeal in a DWI case. Officer observed defendant's vehicle having difficulty in staying in its lane and made a traffic stop. He detected the odor of alcohol coming from the vehicle as he approached the driver's window and observed that driver's eyes were glassy and bloodshot. Defendant admitted having had a "few beers." She failed several sobriety field tests and was arrested. Defendant moved to suppress the evidence prior to her municipal court hearing. Municipal court denied the motion and defendant entered a conditional guilty plea to a first-time offense under N.J.S.A. 39:4-50. Defendant appealed to the Law Division which asked counsel for officer's incident report. Trial counsel objected arguing the report was not in evidence below and had been used exclusively to cross-examine officer. Law Division ordered the report produced for its review. Law Division ultimately advised the parties that it did not require the report, found the traffic stop was lawful, probable cause existed to arrest defendant and denied defendant's appeal. Defendant moved for the court's disqualification, contending its order to produce the incident report and its inquiry about the legality of the plea were indicative of improper bias. Law Division declined to recuse itself. Defendant argued Law Division deprived her of a fair de novo hearing. Court was not persuaded Law Division showed impermissible bias. While Law Division mistakenly determined officer's report was properly before it, record showed it did not consider the report in making its findings on the suppression motion. Nothing in the record showed the Law Division was biased in any way towards defendant. Court found no need under the two-court rule to alter concurrent findings of fact and credibility determinations made by the municipal court and the Law Division as to defendant's suppression motion. However, court vacated defendant's sentence in its entirety as illegal. DOCKET NO. A-2798-22

Source Daily Briefing - 09-30-24

12 No evidence of any corroborated criminal activity associated with defendant's presence on the street as the police approached.

State v. Patterson

Defendant appealed the denial of his motion to suppress evidence obtained during a Terry stop and frisk Detective observed defendant and others on a street corner in a high-crime area. Detective stated he saw defendant perform what he described as a "security check" on a fanny pack when he noticed the police. Detective, based on his training and experience, believed defendant was armed and initiated a pat down search. Detective felt what he believed was a gun in the fanny pack and arrested defendant. Defendant was charged with weapons and controlled dangerous substance counts and pled guilty to two CDS charges and unlawful possession of a handgun after his motion to suppress evidence was denied. Trial court ruled that the totality of circumstances, including the high-crime area and defendant's prior arrest, justified the Terry stop and frisk. Defendant argued trial court erred in finding detective had a reasonable suspicion to stop and frisk him. Court reversed in part. Court found State's evidence did not establish a reasonable and articulable suspicion of criminal activity. The mere tapping of the fanny pack, combined with the high-crime area and defendant's prior record, did not justify the stop. Court was not convinced detective's interpretation of defendant's taps of the bag as a subconscious sign that the bag contained an illegal firearm supported any rational inferences that this was the case. Additionally, there was no evidence of any corroborated criminal activity associated with defendant's presence on the street as the police approached.

Unreported Daily Briefing - 08-27-24

13 Court denied FRO where wife failed to disclose the pending divorce and correct errors in her TRO application.

S.H. v. E.H.,

Plaintiff appealed the denial of a final restraining order against defendant, her estranged husband. Plaintiff alleged that defendant violated a civil restraint order by entering her home and removing personal property while she was out of state. Plaintiff had previously obtained temporary restraining orders against defendant, which were dismissed in favor of civil restraints granting each party exclusive use of certain properties. Plaintiff claimed defendant's actions, including past physical assaults and offensive online posts, warranted a FRO. She presented evidence, including photos of bruises, to support her fear for her safety. Defendant countered that he entered the home solely to retrieve documents related to their divorce and denied taking any jewelry or committing any acts of domestic violence. The trial court dismissed the claims of stalking, harassment, and burglary, finding insufficient evidence to support these allegations. The court allowed the trespass

claim to proceed but ultimately found that defendant's entry into the property, while a technical trespass, did not constitute domestic violence under the Prevention of Domestic Violence Act. The court found plaintiff's testimony inconsistent and lacking credibility, noting her failure to disclose the pending divorce and correct errors in her TRO applications. The court found defendant's testimony credible and consistent. The court concluded that plaintiff failed to meet the second prong of the Silver test, which requires showing that a FRO is necessary to protect the victim from immediate danger or further abuse. The court found no immediate danger to plaintiff given her lack of credible testimony about past acts of domestic violence and suggested that her possible motive in seeking a FRO was to gain leverage in the divorce proceedings. On appeal, the court affirmed the trial court's decision. The court held that the trial judge's findings were supported by substantial, credible evidence and that any error in dismissing the harassment claim did not affect the outcome, as the primary issue was plaintiff's failure to demonstrate the necessity of a FRO Unreported Daily Briefing - 06-28-24

14 PCR to vacate prior DWI plea rejected

State v. Austin,

Defendant appealed the order denying her petition for post-conviction relief. In 2015, defendant was arrested for driving while intoxicated and pled guilty, with a blood alcohol concentration of 0.05% and prescription medication in her system. She admitted to consuming alcohol and acknowledged her impaired ability to operate a vehicle. In 2021, she was charged with a new DWI offense and subsequently filed a PCR petition, claiming an insufficient factual basis for her 2015 plea and ineffective assistance of counsel. Defendant argued excusable neglect for not filing the PCR petition within the five-year period required by Rule 7:10-2, asserting her due process rights were violated due to an insufficient factual basis for the plea and ineffective counsel. The trial court found no valid reason for the delay and determined the plea had an adequate factual basis, supported by defendant's admissions and the evidence presented. The claim regarding the absence of an oath was dismissed as it was not required by Rule 7:6-2(a)(1). Defendant's ineffective assistance of counsel claim was rejected due to lack of evidential support. On appeal, the court affirmed the denial of defendant's PCR petition, agreeing with the trial court's conclusion that defendant did not establish a prima facie claim of ineffective assistance of counsel or grounds to vacate the plea. The plea proceeding and the plea itself were deemed valid, and no injustice or violation of defendant's rights was found. Daily Briefing - 09-18-24

Photo
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Municipal Court Section officers and trustees

Photo page 4 Justice Barry Albin at NJSBA Atlantic City meeting

15 Office space for rent
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16 Will preparation online by a real NJ Attorney without having to travel to a Law Office

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2. Type response/ Fill in details. Email completed Will Questionnaire back

3. Attorney will call to discuss after typed interview form received.

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The Living Will contains a Power of Attorney for Health Care & Medical Decisions. In signing your Living Will, you will designate an individual you trust to act as your legally recognized health care representative to make health care decisions for you in the event you are unable to make decisions for yourself.

The Appellate Division affirmed Zingis's conviction but vacated the enhanced sentence. 471 N.J. Super. 590, 608 (App. Div. 2022). The Appellate Division held that the State failed to prove beyond a reasonable doubt that Zingis's 2012 DWI conviction was not based on an inadmissible Alcohol Influence Report (AIR). Id. at 607. The Court granted certification and remanded the matter to a Special Adjudicator for a plenary hearing on two questions: (1) which counties were affected by Dennis's conduct, and (2) what notification was provided to defendants affected by Dennis's conduct. 251 N.J. 502 (2022).

The Special Adjudicator filed a comprehensive 370-page report detailing his findings of fact and conclusions of law, which the Court summarizes. The parties largely agree with the Special Adjudicator's findings and conclusions. Relevant to this appeal, there are two areas of disagreement: (1) the availability of Exhibit S- 152 -- a 180-page Excel Spreadsheet that sets forth solution changes and calibrations on all Alcotest Instruments in New Jersey from November 5, 2008 through June 30, 2016 -- and (2) the proper procedure for challenging a prior Dennis-affected DWI conviction when facing enhanced sentencing on a subsequent DWI.

The State asks the Court to accept the Special Adjudicator's factual findings and recommendations with two exceptions: (1) Exhibit S-152's availability should be limited; and (2) the validity of a prior DWI should be pursued through PCR in the municipal court where the prior conviction occurred and not be litigated at sentencing for a successive DWI. The State agrees with the Special Adjudicator that prior to seeking an enhanced DWI sentence, it must inform defendants "that a prior DWI conviction it intends to" rely on "was potentially affected by Dennis's malfeasance." The State contends, however, that this notification obligation extends only to cases confirmed to be Dennis-affected cases, not those in which there is no known evidence that would justify overturning convictions on PCR.

HELD: The Court now resolves those limited areas in which the parties could not agree regarding the implementation of the Special Adjudicator's findings and legal conclusions: (1) the proper procedure for challenging a prior Dennis-affected DWI conviction when facing enhanced sentencing on a subsequent DWI; and (2) the appropriate availability of Exhibit S-152.

1. During the initial conference for a DWI matter, the court shall inquire whether the pending matter represents the first or subsequent DWI for a defendant. If the record reflects that the defendant has a prior conviction for DWI, the prosecutor must inform the court, defendant, and defense counsel whether it occurred between the critical dates of November 5, 2008 and April 2016.

If so, the court must then schedule a discovery conference for the State to fulfill its obligation and provide to the defendant and counsel, as well as the court, discovery indicating whether the defendant is a Dennis-affected defendant. The prosecutor will accomplish this by using the summons number from the earlier offense to search Exhibit S-152, which will be redacted to include only non-personal identifying information. Once the corresponding entry is located within Exhibit S-152, the prosecutor is to "copy and paste" that row of data into a new document. The AIR number from that entry must then be compared against the Dennis Calibration Repository, which shall be made publicly available by placing it on a State website and shall also be summarized in a Dennis AIR Summary sheet. If the State determines that the defendant's prior offense involved a Dennis-affected Alcotest Instrument that produced an evidential BAC reading, corroborated by Exhibit S-152 and the Dennis AIR Summary sheet,

Judges should afford the defendant a reasonable amount of time to decide whether to challenge the prior conviction. If the defendant wishes to challenge that earlier conviction, the defendant shall do so by filing for PCR in the jurisdiction of the previous conviction. If the defendant, after being made aware of the existence of a Dennis-affected matter, chooses to proceed without challenging the earlier conviction, the court will inquire on the record that the defendant's decision is knowing and voluntary, and the matter may proceed in the usual course. The Court calls on judges to resolve PCRs and related new matters as expeditiously as possible. The Court provides detailed guidance on all of these points.

2. With regard to Exhibit S-152, the Court adopts a process that balances the State's concerns for privacy with defendants' due process need for notification. Once a summons number is cross-referenced in Exhibit S-152, it shall be provided to the defendant and defense counsel in discovery. Through that process, the defendant and counsel can see the date and location of offense, summons number, and the defendant's name. The prosecutor must then use the summons number to search Exhibit S-152. Therefore, Exhibit S-152 in its newly redacted form, excluding all personal identifiers, must be publicly released on the State's website. The prior disposition, along with the complete row of data from Exhibit S-152 and the Dennis AIR Summary sheet, together will be deemed proof beyond a reasonable doubt of whether a defendant's prior DWI conviction is a Dennis-affected matter.

3. The Court adopts the remainder of the Special Adjudicator's findings, which are supported by substantial credible evidence in the record.

2. Police could not follow suspected drunk driver into garage State v Mellody 479 N.J. Super. 90 (App Div 2024)

The court reverses defendant's driving while intoxicated (DWI) conviction because it was based on evidence obtained by a police officer following his unlawful entry into defendant's garage. The court remands for the Law Division judge to determine whether defendant's careless driving conviction can be sustained based on information learned before the officer unlawfully crossed the threshold of defendant's home.

The court addresses the circumstances in which a police officer may enter a suspect's residence in connection with a drunk or careless driving investigation. The court holds that while police have the authority to perform various "community caretaking" functions—such as determining whether a suspected drunk driver needs medical attention—they may not make a warrantless entry into a suspect's home to execute an investigative detention without consent or exigent circumstances. The court holds this rule applies to defendant's garage.

The court also holds this was not a fleeting or de minimus entry. The officer entered the garage to execute an investigative detention, that is, to seize defendant. The court stresses that even the brief entry of the home to effectuate the seizure of a resident is a significant constitutional intrusion. The court ultimately concludes the State failed to prove by a preponderance of the evidence the officer lawfully entered the garage to render emergency aid under the exigent circumstances exception.

3. Disorderly person defendants not excluded from Recovery/Drug court State v Matrongolo 479 N.J. Super. 8 (App. Div 2024)

In this appeal, the court held individuals convicted of a disorderly persons or petty disorderly persons offense are not categorically excluded from Recovery Court under Track Two based on the classification of their conviction. The court first found the matter justiciable despite the defendant's death and then rejected the rationale that Recovery Court is available only to those convicted of a "crime," which disorderly persons and petty disorderly persons offenses are not under our Criminal Code.

4. No adverse inference solely from defendant's invocation of his Fifth Amendment right to not testify in an FRO hearing.T.B. vs I.W.

Defendant appealed from a final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based upon predicate acts of sexual assault, N.J.S.A. 2C:14-2, lewdness, N.J.S.A. 2C:14-4, and harassment, N.J.S.A. 2C:33-4. He contended the trial court failed to make factual or credibility findings, and abused its discretion in entering an FRO after drawing an adverse inference when he chose not to testify. The court concluded the trial court failed to make sufficient findings of fact and conclusions of law, vacated the FRO, reinstated the amended temporary restraining order (TRO), and remanded for a new FRO hearing before a different judge.

Additionally, the court concluded, as a matter of law, it is not appropriate for a trial court to draw an adverse inference solely from defendant's invocation of his Fifth Amendment right to not testify in an FRO hearing. Despite the remedial nature of the PDVA, and the statute's language insulating a defendant's testimony from use in a criminal proceeding relating to the same act, a defendant's election to not testify cannot give rise to an adverse inference in an FRO hearing. A-3899-22

5. Lane change vio here did not permit drug dog sniff State v Boone 479 N.J. Super. 193 (App. Div. 2024)

The court reverses the denial of a motion to suppress drug evidence discovered by a detective following a dog sniff after an admitted pretext stop. Although not questioning the detective's good faith or impugning the trial court's finding that he was a credible witness, the court finds neither is enough to justify this stop. "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." State v. Scriven, 226 N.J. 20, 37 (2016). The detective failed to offer facts sufficient, as a matter of law, to allow the court to determine he possessed a reasonable articulable suspicion that Boone failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:88(b). See State v. Woodruff, 403 N.J. Super. 620, 627-28 (Law Div. 2008). We do not reach defendant's argument that the automobile exception did not apply because the circumstances giving rise to probable cause were not spontaneous and unforeseeable as required under State v. Witt, 223 N.J. 409, 447-48 (2015). See State v. Smart, 253 N.J. 156, 171 (2023). Docket 09-04-24

6. State may be compelled to provide field and health reports of narcotics detection canines State v Morgan

This appeal presents a question of first impression regarding when the State may be compelled to provide field and health reports of narcotics detection canines in accordance with the Supreme Court's holding in Florida v. Harris, 568 U.S. 237 (2013). Defendant was indicted with second-degree unlawful possession of a weapon,

fourth-degree possession of hollow nose bullets, third-degree possession of a controlled dangerous substance, and second-degree certain persons not to have a weapon. The Law Division denied defendant's motion to compel the State to provide discovery of records related to a narcotics detection canine used to conduct a sniff of the vehicle and whose positive alert gave the basis for probable cause to conduct a full search.

Upon granting leave to appeal, the court concludes that under Harris, the canine's field and health records are not per se irrelevant to reliability and probable cause determinations and therefore, the trial court should have first heard the State's motion challenging the expert before denying the defendant's motion for discovery.

Because the records may be deemed relevant by the trial court, the court reverses and remands for consideration of the State's motion to bar defendant's expert using the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) standard adopted by our Supreme Court for criminal cases in State v. Olenowski, 253 N.J. 133, 151 (2023). App Div- A-0499-23

7. Smell of marijuana emanating from the passenger compartment provided probable cause to search the entire interior for marijuana, which includes the glove box. State v Wilson 478 N.J. Super. 564 (App Div. 2024)

The court reverses an interlocutory Law Division order suppressing handguns and a large-capacity ammunition magazine police found in a locked glove box during a traffic stop. The case presents two questions of first impression under New Jersey law. Are police permitted to search a glove box under the automobile exception based solely on the odor of marijuana emanating generally from the passenger compartment without first determining whether the odor is coming specifically from the vicinity of the glove box? And does the New Jersey automobile exception extend to a glove box that is intentionally locked, manifesting a heightened expectation of privacy in its contents?

Applying principles explained in State v. Cohen, 254 N.J. 308, 328 (2023), the court holds that the smell of marijuana emanating from the passenger compartment provided probable cause to search the entire interior for marijuana, which includes the glove box, since that was a place within the passenger compartment where marijuana could be concealed. The court declines to create a new rule that would essentially require police to follow a scent trail or pre-inspect containers in the passenger compartment before opening them.

The court likewise rejects defendants' contention that by locking the glove box, defendants manifested a heightened expectation of privacy comparable to that which applies to a home, taking the glove box outside the realm of the automobile exception. The court also holds it does not matter under the automobile exception whether the contents of the locked glove box were accessible to the vehicle occupants. In this respect, the automobile exception is different from the search-incident-to-arrest exception, which limits the scope of a warrantless search to areas "within [the arrestees'] immediate control," see Chimel v. California, 395 U.S. 752, 763 (1969).

Finally, the court rules that by using a key to open the locked glove box, rather than breaking it open, the "intensity" with which the warrantless search was executed was eminently reasonable

Ken Vercammen with Retired Justice Barry Albin at The New Jersey State Bar Atlantic City Meeting Join the New Jersey Bar Municipal Court Section

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FALL 2024

N.J.Municipal Court Law Review

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Recent Cases in Municipal Court

1 For prior DWI between 2008-2016, Prosecutor must provide discovery indicating whether the defendant is a Dennis-affected defendant State v. Zingis 251 N.J. 502 (2024)

In State v. Cassidy, 235 N.J. 482, 486 (2018), the Court addressed the consequences of then-Sergeant Marc Dennis's certification of improperly conducted calibration checks of certain Alcotest machines "used to determine whether a driver's blood alcohol content is above the legal limit," which called into question over 20,000 Alcotest results. In this appeal, the Court addresses issues arising from the notification procedure required after Cassidy.

In August 2018, defendant Thomas Zingis was charged with careless driving and driving while under the influence (DWI). He had a prior DWI conviction in April 2012. In December 2018, a trial was held in the municipal court and Zingis was found guilty of DWI. The State requested that Zingis be sentenced as a second offender due to his April 2012 DWI conviction. Relying on Cassidy, Zingis argued that his first conviction should be disregarded for sentencing purposes because the State failed to prove beyond a reasonable doubt that his 2012 DWI conviction was not predicated on a Dennis-calibrated Alcotest. The State responded by asserting that (1) Camden was not one of the Dennis-affected counties, and (2) Zingis's failure to receive notice, consistent with this Court's order in Cassidy, was proof that he was not a Dennis-affected defendant.

The municipal court accepted the prosecutor's representation and sentenced Zingis as a second DWI offender. On appeal, the Law Division also found Zingis guilty of DWI and rejected his request to be sentenced as a first-time offender.

continued on pg 2

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