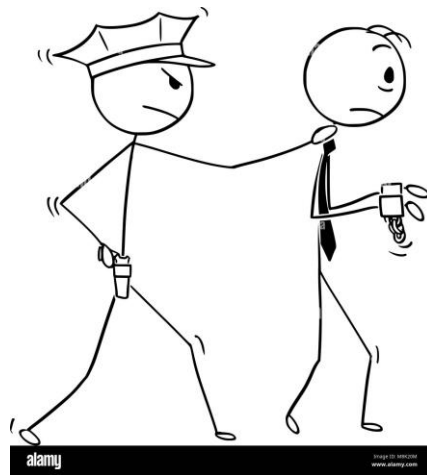


**Garden State CLE Presents:**

**NJ Arrest, Search & Seizure Review**  
**Fall 2023**



**Instructors**



Garden State CLE  
Senior Instructor  
**Robert Ramsey**  
(609-584-1922)

Presenters for  
our Next  
*Lunchtime*  
Learning Event:



Criminal Trial  
Attorney  
**Brian McCauley, Esq.**  
(877-534-7338)

**Reasonable Time Between Knock, Announce and Forced Entry**

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.

**Discussion**

Both the United States Supreme Court and the appellate courts of this state have long declined to define what constitutes a reasonable period of time between the police acts of knocking and announcing their presence prior to the execution of a residential search warrant and the breaching of the doorway. There are simply too many factors associated with what may constitute a reasonable period of time, including the nature of offense, the time of day, the possibility of armed resistance, the destruction of evidence and the like. See Hudson vs. Michigan, 547 U.S. 586, 590(2006). However, although the courts will not define a precise time that is reasonable, security camera video recordings has made it easier for courts to gauge whether the time, as objectively recorded in a video, was reasonable under the circumstances.

**Commentary**

This case is highly unusual in that the Appellate Division rejected the factual findings of the motion judge. Those trial-level findings are normally accorded great deference by reviewing courts. State vs. Washington, 475 N.J.Super 292, 300(App.Div.2023). A reviewing court ordinarily will not disturb the trial court's factual findings unless they are so clearly mistaken that the interests of justice demand intervention and correction. State vs. Gamble, 218 N.J. 412, 425(2014). However, in this instance, the objective evidence revealed in the security camera footage proved that the motion judge's determinations were so wide of the mark that they needed to be superseded by the Appellate Division's own findings.

**State vs. Vanderee, \_\_\_\_\_ N.J.Super \_\_\_\_\_ (App.Div.2023)**  
**2023 WL 4339597**  
**Delay in Conducting a Search Incident to a Lawful Arrest**

Defendant injected himself with fentanyl-laced heroin, lost control of an SUV he had been driving, his vehicle crashed into a gas station and tragically killed three persons and injured others. He pled guilty to three counts of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), and was sentenced to an aggregate prison term of thirty years, with the requirement that he serve over twenty-five years before he is eligible for parole.

Defendant appeals from the denial of his motion to suppress and his sentence. He argues that the warrantless search of his clothes, conducted at a hospital over an hour after his arrest, was unlawful, and that he is entitled to a resentencing. The court holds that the search of his clothes was a lawful search incident to his arrest. The court also holds that the sentencing court conducted the appropriate analysis and did not abuse its discretion in sentencing defendant to three consecutive prison terms of ten years for the death of each victim. Accordingly, the court affirms defendant's convictions and his sentence.

### **Discussion**

The search incident to a lawful arrest exception to the warrant requirement is of ancient lineage, extending back centuries in the common law. Its purpose has always been to allow arresting officers to recover weapons, implements of escape and evidence that the arrested person might otherwise discard. State vs. Roman-Rosado, 462 N.J.Super 183, 201(App.Div.2020). Typically, the search occurs contemporaneously with the arrest. However, that is not always the case. If there is a delay between the arrest and the search, elements of reasonableness control its legality. Essentially, a reviewing court will attempt to discern if both the justification for the search and the attendant delay were objectively reasonable. State vs. Lentz, 463 N.J.Super 54(App.Div.2020).

**State vs. Torres, 253 N.J. 485(2023)**  
**Delayed Search of Property Seized Incident to a Lawful Arrest**

The Court endorses and applies the two-factor test of State vs. 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.

**Discussion**

Although a search incident to a lawful arrest will typically occur contemporaneously with the arrest of the defendant that is not always the case. Circumstances may militate in favor of a delay in conducting the search in a given case. The reasonableness of such a delayed search is judged upon two factors: the objective reasonableness of the delay itself and the scope of the search. State vs. Lentz, , 463 N.J.Super 54, 70(App.Div.2020). This analysis is to be conducted under the totality of the circumstances test. See also United States vs. Edwards, 415 U.S. 800(1974) (search occurred 10 hours after the suspect's arrest.) The following case, State vs. Torres, 253 N.J. 485(2023) will detail these legal principles.

**State vs. Washington, 475 N.J.Super 292(App.Div.2023)**  
**Plain View Seizure of an Automobile as Evidence**

At issue in this appeal is whether a warrant is required to seize a vehicle pursuant to the plain-view exception. The Court granted the State leave to appeal from a Law Division order, which suppressed evidence seized from a motor vehicle that police believed defendant used during the commission of a fatal shooting. The motion judge essentially reasoned police improperly impounded the car because probable cause did not arise spontaneously prior to the warrantless seizure. The judge suppressed the evidence seized, following issuance of a warrant to search the car, as fruit of the poisonous tree.

The State argued police were permitted to seize the vehicle pursuant to the plain-view exception to the warrant requirement while they awaited issuance of the search warrant. The State further contended the "unforeseeability and spontaneity" requirement espoused in State vs. Witt, 223 N.J. 409(2015), applies to the automobile – not the plain-view – exception to the warrant requirement.

The court concludes the motion judge mistakenly conflated the discrete rules for the warrantless search and seizure of an automobile, and erroneously reintroduced the inadvertence prong of the plain-view exception to the warrant requirement, eliminated by our Supreme Court in State vs. Gonzales, 227 N.J. 77(2016). The court therefore reverses the Law Division order and remands for further proceedings.

**Discussion**

The automobile exception to the warrant requirement and the plain view exception have distinct and unique elements. The requirement in New Jersey that probable cause for an automobile search be developed spontaneously and be unforeseen<sup>1</sup> do not apply to a plain view seizure. The elements for that exception include an observation made by an officer who is lawfully in the viewing area that results in probable cause to associate the object seen with a violation of the law. State vs. Gonzalez, 227 N.J. 77, 101(2016). Moreover, New Jersey law no longer requires that the plain view discovery of the evidence be inadvertent.

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<sup>1</sup>State vs. Witt, 223 N.J. 409, 126 A.3d 850(2015).

**State vs. Williams, 254 N.J. 8(2023)**  
**Motor Vehicle Stop Based Upon the Revoked License Status**  
**of the Vehicle's Owner**

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.

**Discussion**

The issue as to whether the license status of the owner of a motor vehicle constitutes a sufficient basis to effect a motor vehicle stop by the police has long been a hotly contested issue in New Jersey. In State vs. Parks, 288 N.J.Super 407, 412(1996), the Court ruled that that when the officer's observation of the driver indicates that the driver could reasonably be the person described in the DMV records as the vehicle's owner, that fact will justify a motor vehicle stop. Two years later, the New Jersey Supreme Court stated in dicta that information indicating that the registered owner of a vehicle is on the revoked list will give rise to the reasonable suspicion that the vehicle is being driven in violation of the motor vehicle laws and is in itself sufficient to justify a motor vehicle stop. State vs. Donis, 157 N.J. 4, 58(1998). Ultimately, the United States Supreme Court held in Kansas vs. Glover, 140 S.Ct. 1183(2020) that the Fourth Amendment permits a computer-based stop of a vehicle owned by a driver with a revoked driver's license even if the officer lacked information negating an inference that the owner is the driver. Despite this ruling, the New Jersey Supreme Court's holding in the following case, State vs. Williams sets a new standard for police to follow when making a motor vehicle stop based upon computer-generated information that the license of the owner is suspended or revoked. According to the Court, in the absence of information that reasonably indicates to a pursuing officer that the driver is not the vehicle's owner, computer-generated information can furnish a reasonable suspicion to authorize the stop. However, once it becomes reasonably apparent to the officer that the observed driver does not resemble the owner -- either by the photo displayed on the vehicle's computer screen or the age, gender, or description of the owner reported on the license or other visible characteristics -- the pursuit or stop of that driver must cease. State vs. Williams, 254 N.J. 8, 40(2023).

**State vs. Cohen, 254 N.J. 308(2023)**  
**Scope of Search Under the Automobile Exception**

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.

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 vs. 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.

**Discussion**

The scope of a motor vehicle search under the automobile exception is a function of the probable cause. Police may conduct their search wherever the probable cause takes them. Thus, for example, if the smell of marijuana emanates from the trunk of the vehicle, the police may search there. The same logic applies for other parts of the vehicle, such as the engine or passenger compartment. Simple stated, under the automobile exception, a warrantless search of a car must be reasonable in scope and strictly tied to and justified by the circumstances which rendered its initiation permissible. State vs. Patino, 83 N.J. 1, 10-11(1980). However, as will be explained in the State vs. Cohen, 254 N.J. 308(2023), a generalized smell of raw marijuana does not justify a search of every compartment of an automobile.

**State vs. Miranda, 253 N.J. 461(2023)**  
**Apparent Authority of a Third Party to Consent to a Search**

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.

**Discussion**

Under New Jersey law, a police officer may rely upon the apparent authority of a third person's consent to conduct 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 relied, from an objective perspective, on that appearance of authority. State vs. Cushing, 226 N.J. 187, 199-200(2016). See also Illinois vs. Rodriguez, 497 U.S. 177, 185-89(1990). The officer's determination as to the apparent authority need not be objectively correct. Rather, the test is whether the officer's belief was objectively reasonable under the facts as he understood them at the time of the search. State vs. Sutherland, 231 N.J. 429, 437(2018). Apart from the foregoing, although a third party's authority to consent to a residential search gives the police the right to seize any evidence that was in plain view, the third party who has common authority over the premises might nevertheless lack common authority over the items therein. State vs. Coyle, 119 N.J. 194, 217(1990). Under these circumstances, the police must either get consent from the true owner or utilize a different exception to the warrant require, such as exigent circumstances. In this context, exigent circumstances can be found when there is evidence that (1) the search was premised on probable cause and (2) law enforcement acted in an objectively reasonable manner to meet an exigency that did not permit time to secure a warrant. State vs. Manning, 240 N.J. 308, 337(2020). A reviewing Court's exigency analysis should focus on the following factors: (1) the seriousness of the crime under investigation, (2) the urgency of the situation faced by the officers, (3) the time it would have taken to secure a warrant, (4) the threat that evidence would be destroyed or lost or people would be endangered unless immediate action was taken, (5) information that the suspect was armed and posed an imminent danger, and (6) the strength or weakness of the probable cause relating to the item to be searched or seized. Id. at 333-334. The following case, State vs. Miranda explores the principles of third party consent and exigent circumstances sufficient to justify the search of evidence found in plain view.



**State vs. Jones, 475 N.J.Super 520(App.Div.2023)**

**When a plenary motion to suppress hearing is necessary: rebuttable presumptions available based upon unavailable police body camera video recordings**

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.

**Discussion**

The Appellate Division's decision in State vs. Jones, 475 N.J.Super 520(2023) raises two important issues. First, the panel reviews the circumstances under which disputed facts in a motion to suppress will require a plenary evidential hearing. According to the panel, Rule 3:5-7(c) requires a testimonial hearing if material facts are disputed. To establish a dispute as to material facts, a defendant must do more than allege baldly that the search warrant was unlawful. Factual allegations which are general and conclusory or based on suspicion and conjecture will not establish a dispute of material facts warranting a testimonial hearing. State vs. Hewins, 166 N.J.Super 210, 215(LawDiv.1979). However, in cases where the allegations made by the defendant directly refute the State's evidence or, if believed by the Court, will be favorably dispositive of the motion, the motion

judge should hold a hearing. Beyond the foregoing, New Jersey statutory law under N.J.S.A. 40A:14-118.5(q) establishes a rebuttable presumption that missing or destroyed police body-worn camera footage would be exculpatory. The Court's decision in Jones makes this presumption applicable to motions to suppress evidence.

**State vs. Johnson, 476 N.J.Super 1(App.Div.2023)**  
**Police search for motor vehicle registration**

The court reverses the trial judge's denial of defendant's motion to suppress drugs police found following a motor vehicle stop based on observed traffic violations. This case presents a novel question concerning the vehicle registration search exception to the warrant requirement. That exception authorizes police to enter a lawfully stopped vehicle to conduct a pinpointed search for a registration certificate if the motorist is unable or unwilling to produce that document after having been provided a meaningful opportunity to comply with the police request for it. State vs. Terry, 232 N.J. 218, 222 (2018). In this case, defendant parked and exited the vehicle before police could effectuate the stop. The court addresses whether police may initiate a search under this "very narrow" exception when the detained motorist is outside the vehicle when police request the registration certificate, and the officer determines it would be unsafe to allow the motorist to reenter the vehicle to retrieve it.

The court concludes that providing a detained motorist a meaningful opportunity to produce the registration certificate is an indispensable prerequisite to conducting a registration search—one that can only be excused when the motorist is unable or unwilling to comply with the police request for the vehicle credentials. The court holds a motorist is not "unable" to produce a registration certificate within the meaning of the exception when the sole reason for such inability is a police officer's discretionary decision to prevent reentry. The court reasons that any contrary interpretation of the registration search exception would undermine, if not eviscerate, the protection of privacy rights afforded by the meaningful-opportunity element by leaving its application to the mercy of unreviewable police discretion. The court declines to create a categorical exemption to the meaningful-opportunity requirement when police determine, in the exercise of their discretion, the motorist should not be allowed to reenter the stopped vehicle for reasons of officer safety.

Although the police in this case were permitted for their own safety to place defendant in the police car and prevent him from reentering the detained vehicle throughout the investigative detention, that decision had the effect of foreclosing a warrantless registration search. The court notes that strict enforcement of the meaningful-opportunity prerequisite in these circumstances would not deprive police the ability to investigate whether a car was stolen since they can obtain the information contained in the paper registration certificate by conducting a Motor Vehicle Commission database look-up.

The court also addresses significant recent revisions to N.J.S.A. 39:3-29—the statute that prescribes a motorist's duty to possess and exhibit a registration certificate to police during a motor vehicle stop and that undergirds the registration search exception to the warrant requirement. Under the revised statutory

framework, motorists are no longer required to possess a paper copy of the vehicle registration certificate. Rather, they are now permitted to keep and exhibit the registration certificate in either paper or electronic form.

To avoid the futility and needless privacy intrusion of a physical search for a paper document that may not even exist, and that need not be kept in the vehicle in any event, the court holds, prospectively, that police may not enter a detained vehicle under the authority of the registration search exception to search for a paper document without first asking the motorist whether the registration is kept in paper rather electronic form.

### **Discussion**

Although the topic has never been the subject of a decision by the United States Supreme Court, New Jersey constitutional doctrine recognizes a motor vehicle registration search exception to the warrant requirement. This narrow exception permits a police officer to conduct a limited search for the registration papers in the areas where they are likely kept in the vehicle when, during a lawful stop, a motorist is either unwilling or unable to present proof of a vehicle's ownership. State vs. Terry, 232 N.J. 218, 222-223(2018). See also State vs. Keaton, 222 N.J. 438, 443-444(2015) (driver of the vehicle was not given an opportunity to retrieve the registration by the police). In the following case, State vs. Johnson, 476 N.J.Super 1(App.Div.2023), the Supreme Court is called upon to address a registration search accomplished by the police while the defendant was detained outside the vehicle and not afforded a meaningful opportunity to reenter his car and retrieve the registration on his own.

**State vs. Bullock, 253 N.J. 512 (2023)**  
**Incomplete Miranda warnings**

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 vs. 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.

**Discussion**

It is a fundamental principle of criminal jurisprudence that a person who is subjected to police custodial interrogation must be adequately and effectively apprised of his rights to remain silent, the right to retained or appointed counsel, that anything said can and will be used against him in court. A confession or admission obtained without advising a criminal suspect of these rights will be inadmissible against him at trial.

In New Jersey, the question as to whether a person is in custody depends upon whether there has been a significant deprivation of the suspect's freedom of action based on the objective circumstances, including the time and place of the interrogation, the status of the interrogator, the status of the suspect, and other such factors. State vs. P.Z., 152 N.J. 86, 103(1997). Once the suspect is in custody, the police must fully and completely advise him of his rights without minimizing or undercutting the significance of the right to remain silent. The Court's decision in State vs. Bullock, 253 N.J. 512(2023) addresses both of these issues.