

New Jersey Search-and-Seizure Law: A Recent Perspective

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My task is to provide an overview of the New Jersey Supreme Court's search-and-seizure law established over the past five years. I will endeavor to fulfill that mission by highlighting the substantive holdings of previous decisions, many of which you undoubtedly are aware. Beyond delivering a listing of those holdings, I hope to provide some common themes running through our recent case law. That latter objective is a challenge because, by design, search-and-seizure jurisprudence turns on highly specific circumstances. A variation of a single fact can lead to opposite results in cases involving otherwise identical fact patterns.¹ From that perspective, it sometimes is difficult to discern a unifying principle among seemingly similar cases.

But that itself becomes a unifying tenet of sorts, namely, that the law in this area generally is not captive to *per se* rules but rather takes on contour and shape depending on the facts at issue. The court made that point explicitly in *State v. Cooke*.² After discussing the factors that supported a finding of exigency in the context of a warrantless automobile search, the court stated that any one of those factors would have been insufficient to justify the search.³ The court also stated that "the term 'exigent circumstances' is, by design, inexact. It is incapable of precise definition because, by its nature, the term takes on form and shape depending on the facts of any given case."⁴

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¹ See *infra* notes 25–48 and accompanying text.

² 163 N.J. 657, 751 A.2d 52 (2000).

³ *Id.* at 675, 751 A.2d at 102.

⁴ *Id.* at 676, 751 A.2d at 102.

The court again displayed its distaste for *per se* rules in *State v. Wilson*.⁵ In that case, the court held that the State had insufficient probable cause to conduct a search of a vehicle in which the defendant was a passenger, based on the officer's testimony at the suppression hearing.⁶ Although it affirmed the Appellate Division, which had reached the same conclusion, the court stated that it was not approving a hypothetical statement contained in the lower court's opinion that suggested a *per se* rule for future cases.⁷ The court stated: "In avoiding bright-line pronouncements in this area of law, we continue to believe that 'courts must consider the totality of the circumstances, without focusing exclusively on any one factor, in considering whether probable cause has been established.'"⁸

Despite the seemingly idiosyncratic nature of our jurisprudence, the overarching inquiry in most search-and-seizure cases is reasonableness. At times the inquiry is unstated. But it usually boils down to a single question: Did the police act in an objectively reasonable fashion? That question flows directly from the text of the Fourth Amendment⁹ and the analogous Article I, paragraph 7 of the New Jersey Constitution.¹⁰ To some extent reasonableness is like pornography—you know it when you see it.¹¹ To assist courts in the reasonableness inquiry and presumably to foster a consistent approach, the United States Supreme Court and my former court have articulated standards or suggested frameworks to guide trial courts.

⁵ 178 N.J. 7, 833 A.2d 1087 (2003).

⁶ *Id.* at 15, 833 A.2d at 1091.

⁷ *Id.* at 18, 833 A.2d at 1091.

⁸ *Id.* (citing *State v. Sullivan*, 169 N.J. 204, 216, 777 A.2d 60, 67 (2001); *State v. Holland*, 176 N.J. 344, 362, 823 A.2d 38, 49 (2003)).

⁹ The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

¹⁰ Article I, paragraph 7 of the New Jersey Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

N.J. CONST. art. I, ¶ 7.

¹¹ See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

As an example, in *State v. Ravotto*,¹² my former court adopted for use under Article I, paragraph 7 the same balancing test espoused by the United States Supreme Court in *Graham v. Connor*¹³ to determine whether the exercise of force by police is reasonable. The test “requires careful attention to the facts and circumstance of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”¹⁴ *Ravotto* is not a lone example. Over the past five years the court has articulated standards or multi-part tests in numerous other settings.¹⁵

Another basic principle confirmed within the past five years is that the party bearing the burden of proof in a suppression motion (for example, the State in cases of warrantless searches) must establish an adequate record to justify the conduct or position at issue. *State v. Wilson* made that point expressly.¹⁶ Although the court has demonstrated a willingness to infer facts from the record or take judicial notice of facts when appropriate, as it did in *State v. Nishina*,¹⁷ *Wilson* is a good example of the limits of such willingness.

In *Wilson*, the State argued on appeal that the quantity of illegal drugs found on the defendant’s person provided sufficient probable cause to believe that the automobile in which the defendant had been a passenger contained additional drugs, justifying a warrantless search of the car.¹⁸ The problem with that argument, as the court saw

¹² 169 N.J. 227, 235–36, 777 A.2d 301, 306 (2001).

¹³ 490 U.S. 386, 396–97 (1989).

¹⁴ *Ravotto*, 169 N.J. at 236, 777 A.2d at 306–07 (internal quotation marks omitted) (quoting *Graham*, 490 U.S. at 396).

¹⁵ *State v. Johnson*, 168 N.J. 608, 619, 775 A.2d 1273, 1279–80 (2001) (establishing a three-part framework within which to evaluate no-knock search warrants); *State v. Holland*, 176 N.J. 344, 360–61, 823 A.2d 38, 48 (2003) (establishing a three-part test for evaluating the independent-source doctrine); *Joye v. Hunterdon Cent. Reg’l High Sch. Bd. of Educ.*, 176 N.J. 568, 597, 826 A.2d 624, 642 (2003) (adopting for use under the New Jersey Constitution the federal special-needs test articulated by the United States Supreme Court in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), when evaluating random drug and alcohol testing of high school students); *State v. Cassidy*, 179 N.J. 150, 161, 843 A.2d 1132, 1138 (2004) (confirming that three requirements are necessary to sustain police conduct under the emergency aid exception to the warrant requirement).

¹⁶ *State v. Wilson*, 178 N.J. 7, 17, 833 A.2d 1087, 1093 (2003).

¹⁷ 175 N.J. 502, 507, 816 A.2d 153, 156 (2003) (inferring from the record that the defendant was at least seventeen years of age because he was a licensed driver, and taking judicial notice of the fact that the school in question was a lower elementary school).

¹⁸ *Wilson*, 178 N.J. at 17, 833 A.2d at 1093.

it, was that the State submitted insufficient evidence to support it at the suppression hearing.¹⁹ The court explained that, “[a]lthough we can infer or take judicial notice of certain facts in appropriate circumstances, we cannot fill in gaps in the record to supply the requisite proofs required of the State under constitutional standards.”²⁰

The State also included in its appellate argument an alternative theory for admitting the evidence, namely, on the basis of a search incident to a lawful arrest.²¹ The problem with that argument was that the State did not seek certification on that theory of the case.²² Thus, the court declined to rule on it.²³ Accordingly, in addition to its substantive holding, *Wilson* stands for the proposition that the court will decline to rule on alternate contentions raised by a party on appeal if the argument or contention was not first contained in the petition for certification.²⁴

Perhaps no two cases better illustrate the fact-sensitive nature of my former court’s search-and-seizure jurisprudence than two cases decided at the end of the 2003-2004 term, *State v. Pineiro*²⁵ and *State v. Moore*.²⁶ In *Pineiro*, a police officer was on patrol in a so-called “high crime area” when he observed the defendant and a co-defendant standing on a street corner.²⁷ The officer testified that he recognized both individuals and had received unspecified intelligence reports indicating that the defendant was a suspected drug dealer.²⁸ The officer knew the co-defendant because he had arrested him for child support and possible possession of a controlled dangerous substance and was aware that he was also a drug user.²⁹

The officer observed the defendant give the co-defendant a pack of cigarettes, but saw no money exchanged.³⁰ The two men appeared shocked and surprised in noticing the officer immediately after the transfer.³¹ Turning to leave the area, the defendant started to walk

¹⁹ *Id.* at 15, 833 A.2d at 1091.

²⁰ *Id.* at 17, 833 A.2d at 1093 (internal citation omitted).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Wilson*, 178 N.J. at 17–18, 833 A.2d at 1093.

²⁵ 181 N.J. 13, 853 A.2d 887 (2004).

²⁶ 181 N.J. 40, 853 A.2d 903 (2004).

²⁷ *Pineiro*, 181 N.J. at 18, 853 A.2d at 890.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

down the street while the co-defendant mounted a nearby bicycle.³² The officer detained the co-defendant, informing him that the officer believed that the co-defendant had just purchased drugs.³³ The man began to cry, denying any drug involvement.³⁴ The officer retrieved the cigarette pack, finding heroin inside.³⁵ Other officers stopped and arrested the defendant.³⁶

On those facts, the court held that the totality of circumstances justified an investigatory detention of both men.³⁷ In so doing, the court confirmed the applicable standard that a proper investigatory detention “is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.”³⁸

The court next considered whether those same facts supported probable cause to search the co-defendant and seize the cigarette pack found on his person.³⁹ The court concluded that the facts were insufficient for that purpose.⁴⁰ While confirming that probable cause equated with “a well-grounded suspicion that a crime has been or is being committed,”⁴¹ the court held that the government’s proofs fell short of that standard.⁴² *Pineiro* is a good example of the sometimes subtle distinction between the reasonable suspicion standard and probable cause.

In *Moore*, decided the same day as *Pineiro*, a twelve-year veteran police officer was working undercover in an area described as a high crime area.⁴³ He observed a group of six people in a vacant lot and observed an individual, later identified as the defendant, and his companion hand currency to a third man, each receiving from that man a small item in return.⁴⁴ The court upheld the subsequent search and seizure of the defendant, explaining that the officer

³² *Id.*

³³ *Pineiro*, 181 N.J. at 18, 853 A.2d at 890.

³⁴ *Id.* at 19.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 25, 853 A.2d at 894 (internal quotation marks omitted).

³⁸ *Id.* at 20, 853 A.2d at 891.

³⁹ *Pineiro*, 181 N.J. at 27, 853 A.2d at 896.

⁴⁰ *Id.* at 29, 853 A.2d at 896.

⁴¹ *Id.* at 21, 853 A.2d at 892 (internal quotation marks omitted) (quoting *State v. Nishina*, 175 N.J. 502, 816 A.2d 153, 161 (2003)).

⁴² *Id.* at 28, 853 A.2d at 896.

⁴³ *State v. Moore*, 181 N.J. 40, 43, 853 A.2d 903, 905 (2004).

⁴⁴ *Id.*

was an experienced narcotics officer. He previously had made numerous drug arrests in the same neighborhood, which was known to the police for heavy drug trafficking. Using binoculars, he observed three men move away from the group to the back of a vacant lot, and he saw [the] defendant and his companion give money to the third person in exchange for small unknown objects. Based on his experience and those factors, it was reasonable for [the officer] to conclude that the totality of the circumstances supported a well-grounded suspicion that he had witnessed a drug transaction.⁴⁵

In comparing the two cases and the opposite results, it is apparent that the exchange of currency was a critical distinction. The court in *Pineiro* made that point explicitly, stating that “unlike in *Moore*, there was no observation of currency or anything else exchanged, rather, there was merely a transfer of a cigarette pack under circumstances that had both innocent and suspected criminal connotations.”⁴⁶

The *Pineiro* court also noted that “there was no proof of ‘regularized police experience that objects such as [hard cigarette packs] are the probable containers of drugs.’”⁴⁷ Moreover, the court stated that: “The evidence did not even include the number of times the officer had encountered the use of cigarette packs to exchange drugs or what percentage of observed cigarette packs held drugs.”⁴⁸

Another example of how two seemingly similar cases might lead to opposite results can be found by comparing *State v. Rodriguez*⁴⁹ with *State v. Golotta*.⁵⁰ In *Rodriguez*, the police received an anonymous informant’s tip that the defendant and his companion would be engaged in drug trafficking.⁵¹ The tipster described the physical appearance of both men, noting that they would be traveling by bus.⁵² The caller also informed the police that the two men had left Ocean City to go to Philadelphia to purchase the drugs and that they would return that same day via Atlantic City.⁵³

⁴⁵ *Id.* at 46–47, 853 A.2d at 907.

⁴⁶ *Pineiro*, 181 N.J. at 28, 853 A.2d at 896.

⁴⁷ *Id.* (alteration in original) (quoting *State v. Demeter*, 124 N.J. 374, 385, 590 A.2d 1179, 1185 (1991)).

⁴⁸ *Id.*

⁴⁹ 172 N.J. 117, 796 A.2d 857 (2002).

⁵⁰ 178 N.J. 205, 837 A.2d 359 (2003).

⁵¹ *Rodriguez*, 172 N.J. at 121, 796 A.2d at 859.

⁵² *Id.* at 121–22, 796 A.2d at 859.

⁵³ *Id.* at 122, 796 A.2d at 859.

After observing two men matching the description exit a bus in Atlantic City, the officers quickly sought to detain them.⁵⁴ The officers asked the men if they would agree to speak with them and accompany them to the bus terminal patrol office.⁵⁵ Once inside that office, the police separated the two men, inquiring of each man whether he had anything on him that he “shouldn’t have.”⁵⁶ The defendant signed a consent to search form, resulting in a search of his person and bag that yielded heroin.⁵⁷

After concluding that a field inquiry of the defendant had escalated into an investigative detention, the court considered whether the police had a reasonable articulable suspicion of criminal wrongdoing to justify that conduct.⁵⁸ The court held that the officers did not.⁵⁹ The court first noted that, because the police asked no questions of the defendant before taking him to the patrol office and had observed nothing unusual about him, the only possible basis on which to justify the stop was the information imparted by the anonymous informant.⁶⁰ The court concluded that without greater corroboration of the tip’s content, the tip standing alone could not justify an investigatory detention.⁶¹ The court explained:

The informant accurately described the appearance of [the] defendant and [his companion], and correctly predicted their location at the bus terminal. We cannot reasonably conclude, based on those benign elements of the informant’s tip, that the tip itself was “reliable in its assertion of illegality[.]” In respect of that aspect of the tip most critical to the analysis, namely, that [the] defendant would be engaged in drug trafficking, the informant provided no explanation of how or why he arrived at that conclusion. In fact, the only portion of the tip corroborated by the officers pertained to the innocent details of [the] defendant’s appearance at the bus terminal.⁶²

The court suppressed the fruits of the search even though the defendant ultimately had consented to it.⁶³ Therefore, beyond

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 123, 796 A.2d at 860.

⁵⁷ *Rodriguez*, 172 N.J. at 124, 796 A.2d at 860.

⁵⁸ *Id.* at 129, 796 A.2d at 864.

⁵⁹ *Id.* at 131, 796 A.2d at 865.

⁶⁰ *Id.* at 132–33, 796 A.2d at 865–66.

⁶¹ *Id.* at 133, 796 A.2d at 866.

⁶² *Id.* at 131, 796 A.2d at 865 (third alteration in original) (internal citation omitted).

⁶³ *Rodriguez*, 172 N.J. at 133, 796 A.2d at 866.

serving as an example of the reasonable suspicion standard, *Rodriguez* demonstrates how the court will invalidate a suspect's consent when it finds that a constitutional violation has occurred earlier in the chain of events. Compare that result to the one obtained in *Golotta*.⁶⁴

In *Golotta*,⁶⁵ an anonymous 9-1-1 caller gave a description of a motor vehicle that the caller indicated was being driven erratically on a public road.⁶⁶ The 9-1-1 dispatcher relayed the information to two officers who spotted the vehicle and immediately pulled it over without independently observing whether it "was all over the road" or "out of control" as described by the anonymous caller.⁶⁷ Notwithstanding that lack of corroboration, the court upheld the stop of the vehicle.⁶⁸

The court distinguished *Rodriguez* by noting that in *Rodriguez* there was no immediate safety risk either to the public or to the officers.⁶⁹ In contrast, the purpose of the stop in *Golotta* "was to protect [the] defendant and the public from a threat of death or serious injury occasioned by [the] defendant's suspected condition [of being an intoxicated driver]."⁷⁰

The court also explained that a 9-1-1 call, by its nature, "carries a fair degree of reliability,"⁷¹ and that the information imparted to the officers had "an unmistakable sense that the caller ha[d] witnessed an ongoing offense that implicate[d] a risk of imminent death or serious injury. . . ."⁷² Moreover, the caller disclosed a sufficient quantity of information about the suspected vehicle, including its license plate number, "to permit the officers reasonably to conclude that [the] defendant's truck was, in fact, the suspected vehicle."⁷³

The lessons learned from *Pineiro*, *Moore*, *Rodriguez*, and *Golotta* is that individual facts matter very much in the search-and-seizure context, that the trial court should painstakingly review such facts when evaluating the challenged conduct, and that an appellate court often will rely on subtle differences in fact patterns when conducting its own review of a suppression motion. Above all, trial courts should

⁶⁴ See *infra* notes 68–73 and accompanying text.

⁶⁵ 178 N.J. 205, 837 A.2d 359 (2003).

⁶⁶ *Id.* at 209, 837 A.2d at 361.

⁶⁷ *Id.*

⁶⁸ *Id.* at 218, 837 A.2d at 366.

⁶⁹ *Id.* at 227, 837 A.2d at 372; see *supra* notes 51–62 and accompanying text for a discussion of *Rodriguez*.

⁷⁰ *Id.* at 228, 837 A.2d at 372.

⁷¹ *Golotta*, 178 N.J. at 219, 837 A.2d at 367.

⁷² *Id.* at 221–22, 837 A.2d at 369.

⁷³ *Id.* at 223, 837 A.2d at 370.

state their reasoning clearly and should describe with specificity the relevant factual findings justifying their decisions.

Before running down the list of recent holdings, the last conceptual point that I would like to note is that my former court has continued its tradition of departing from federal law under appropriate circumstances. Both the majority and dissenting opinions in *Joye v. Hunterdon Central Regional High School Board of Education*,⁷⁴ the high school drug-testing case, provide a succinct catalogue of instances in which the New Jersey Supreme Court has interpreted the State constitution as affording its citizens greater protections than those established by its federal counterpart.

Those, then, are some of the broad concepts reflected in the last five years of case law. Given the fact-sensitive nature of our case law, no discussion is complete without at least a brief rundown of the court's actual holdings (some of which I already have described). I now focus on the major cases decided since November 2003.

The court decided *State v. Golotta* in December 2003. As I mentioned earlier, the *Golotta* court sustained the stop of a vehicle based on information imparted by an anonymous 9-1-1 caller.⁷⁵ The case is interesting from a number of perspectives. Aside from its narrow holding, the court did not permit the Attorney General belatedly to submit the fact that the caller was, in reality, not anonymous because a record of the name was contained in a written abstract generated by the 9-1-1 dispatch system.⁷⁶ That fact was never brought out at the suppression hearing conducted two years earlier.⁷⁷ The court agreed with the defendant that the State should not be permitted to "re-write the trial record" so long after the motion judge had made his findings.⁷⁸

The court did, however, use some of the generic information about the 9-1-1 system that was included in the Attorney General's supplemental filing.⁷⁹ That permitted the court to describe in greater detail in its opinion the 9-1-1 system statewide. It also is interesting to note that *Golotta* was cited not too long ago by the Hawaii Supreme

⁷⁴ 176 N.J. 568, 607, 826 A.2d 624, 648 (2003) (noting distinctions between the protections provided by the United States Constitution and the New Jersey Constitution); *id.* at 636–38, 826 A.2d at 665–66 (LaVecchia, J., dissenting) (same).

⁷⁵ 178 N.J. at 209, 837 A.2d at 361.

⁷⁶ *Id.* at 211, 837 A.2d at 362.

⁷⁷ *Id.* at 211–12, 837 A.2d at 362.

⁷⁸ *Id.* at 211, 837 A.2d at 362.

⁷⁹ *Id.* at 212, 837 A.2d at 363.

Court,⁸⁰ a reminder that New Jersey's jurisprudence is often cited beyond its borders.

A few months after *Golotta*, in March 2004, the court decided *State v. Cassidy*.⁸¹ In that case, the court considered the emergency aid exception to the warrant requirement and held that the exception did not excuse a search by police of the defendant's residence that had been conducted pursuant to an invalid warrant.⁸² The case also is significant for its succinct summary of the exigency doctrine.⁸³ Further, the court's opinion is noteworthy for its description of the interplay between exigency and emergency aid, as well as the interplay between those two doctrines and the Prevention of Domestic Violence Act,⁸⁴ which provided the backdrop to the appeal.⁸⁵

*State v. Jones*⁸⁶ and *State v. Sanchez*,⁸⁷ both decided in April 2004, continued the court's jurisprudence in the area of no-knock warrants. The court reaffirmed the three-part test articulated three years earlier in *State v. Johnson*.⁸⁸ *Jones* is significant because it addressed an issue left open in *Johnson*, namely, the sufficiency and relevance of a suspect's criminal history in establishing a reasonable suspicion of danger to an officer's safety, one of the grounds for sustaining a no-knock warrant.⁸⁹ The court held that the defendant's seven-year-old arrest for assault against a police officer and a weapons-related crime were sufficient for that purpose.⁹⁰

Jones also addressed whether the warrant was based on sufficient probable cause. Upholding the warrant on that basis, the court repeated an observation made in a prior case, *State v. Sullivan*,⁹¹ "that a controlled drug buy, by itself, would not conclusively establish probable cause."⁹² The *Jones* court hastened to add, however, that the observation in *Sullivan* "was not intended to suggest that a controlled

⁸⁰ See *State v. Prendergast*, 83 P.3d 714, 722 (Haw. 2004) (denying defendant's motion to suppress evidence obtained as a result of an anonymous tip).

⁸¹ 179 N.J. 150, 843 A.2d 1132 (2004).

⁸² *Id.* at 162, 843 A.2d at 1139.

⁸³ *Id.* at 160, 843 A.2d at 1137.

⁸⁴ N.J. Stat. Ann. § 2C:25-17 (West 1991).

⁸⁵ *Cassidy*, 179 N.J. at 162-65, 843 A.2d at 1138-40.

⁸⁶ 179 N.J. 377, 846 A.2d 569 (2004).

⁸⁷ 179 N.J. 409, 846 A.2d 588 (2004).

⁸⁸ 168 N.J. 608, 775 A.2d 1273 (2001).

⁸⁹ *Jones*, 179 N.J. at 399, 846 A.2d at 581 (citing *State v. Sullivan*, 169 N.J. 204, 216, 777 A.2d 60, 67 (2001)).

⁹⁰ *Id.* at 401-02, 846 A.2d at 583.

⁹¹ 169 N.J. 204, 777 A.2d 60 (2001).

⁹² *Jones*, 179 N.J. at 392, 846 A.2d at 577.

drug purchase is an inconsequential factor.”⁹³ The court went on to state that “even one additional circumstance might suffice, in the totality of the circumstances, to demonstrate probable cause when the police successfully have performed a controlled drug buy.”⁹⁴

In *Sanchez*, only the no-knock aspect of the warrant was at issue. As in *Jones*, the court concluded that within the totality of circumstances the defendant’s criminal history provided a sufficient basis for the no-knock entry into his apartment.⁹⁵ That history included an arrest for aggravated assault and unlawful possession of a weapon.⁹⁶

The 9-1-1 system again was at the center of a search-and-seizure case in *State v. Frankel*,⁹⁷ decided in May 2004. In that case, a local police department received an open-line 9-1-1 call from the defendant’s home address.⁹⁸ The department dispatched an officer to the home where the defendant greeted him.⁹⁹ The defendant “advised the officer that he lived alone, did not make and could not account for the call, and would not consent to a search of his home so that the officer could satisfy himself that no one was in need of assistance.”¹⁰⁰ As he spoke to the officer, defendant was positioned behind a white sheet that was hanging behind the screen door, which blocked “any view through the door or side windows.”¹⁰¹

According to the officer’s testimony, the defendant “appeared both surprised and nervous by the officer’s presence.”¹⁰² The dispatcher informed the officer that he (the dispatcher) dialed back the defendant’s telephone number only to receive a busy signal.¹⁰³ According to the court’s opinion, that “information confirmed in [the officer’s] mind that there might be ‘somebody inside the house.’”¹⁰⁴

The officer ultimately entered the home, discovering illegal drugs in plain view.¹⁰⁵ The court upheld the resulting seizure of

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *State v. Sanchez*, 179 N.J. 409, 412, 846 A.2d 588, 589 (2004).

⁹⁶ *Id.* at 411, 846 A.2d at 589.

⁹⁷ 179 N.J. 586, 847 A.2d 561 (2004).

⁹⁸ *Id.* at 592, 847 A.2d at 564.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 593, 847 A.2d at 565.

¹⁰² *Id.*

¹⁰³ *Frankel*, 179 N.J. at 594–95, 847 A.2d at 566.

¹⁰⁴ *Id.* at 595, 847 A.2d at 566.

¹⁰⁵ *Id.* at 595–96, 847 A.2d at 566.

contraband.¹⁰⁶ Citing the totality of circumstances and the emergency aid doctrine, the court explained:

This is a close case and the unique facts that justified the warrantless search of [the] defendant's home should not be over read. . . . The privacy interests of the home are entitled to the highest degree of respect and protection within our constitutional framework. But there are limited exceptions to the warrant requirement when the duty to preserve and protect life and the need to act decisively and promptly must outweigh the privacy interests of an individual. This case presents one such example.¹⁰⁷

Safety likewise was the theme in *State v. Diloreto*,¹⁰⁸ decided in June 2004. In that case, a police officer ran a check of the defendant's car license plate number using a mobile data terminal and discovered that the defendant was listed under the NCIC¹⁰⁹ system as an endangered missing person.¹¹⁰ In reality, that listing was in error, although the officer at that juncture was unaware of that fact.¹¹¹ When the officer first discovered the car it appeared to be running, its windows were fogged, and the defendant appeared to be asleep.¹¹²

The vehicle itself was parked at a hotel facing U.S. Highway 46.¹¹³ The officer knew of reports from that location of automobile thefts and attempted suicides. According to the court's opinion, "[a]fter receiving the NCIC alert, the officer called for assistance. He also noticed that the tailpipe of the parked vehicle was no longer emitting fumes and concluded '[t]hat the engine had been shut off.'" Additionally, the court observed that "[the d]efendant produced a driver's license and social security card, which matched the name of the missing person."¹¹⁴

A second officer arrived.¹¹⁵ While the two officers awaited confirmation of the defendant's status from their police headquarters, they decided to place the defendant in the police

¹⁰⁶ *Id.* at 610–11, 847 A.2d at 575.

¹⁰⁷ *Id.* at 611–12, 847 A.2d at 576 (internal citations omitted).

¹⁰⁸ 180 N.J. 264, 850 A.2d 1226 (2004).

¹⁰⁹ According to the court, the National Crime Information Center ("NCIC") "houses a national network of information authorized by Congress and made available to federal and local criminal justice agencies." *Id.* at 269, 850 A.2d at 1229.

¹¹⁰ *Diloreto*, 180 N.J. at 269, 850 A.2d at 1229.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 270, 850 A.2d at 1229.

¹¹⁴ *Id.* at 271, 850 A.2d at 1230.

¹¹⁵ *Id.*

vehicle.¹¹⁶ “At that time, it was raining.”¹¹⁷ One of the officers explained, “it was simply a welfare check” and that they decided “to put him in the rear of the squad car . . . for reasons of officer safety as well as safety to the individual.”¹¹⁸

Before placing the defendant into the squad car, one of the officers patted down the defendant’s front pocket and felt a large metal object.¹¹⁹ At first the defendant said that he did not know what that object was but as the officer began to remove it, the defendant identified it as “a clip.” The officer understood that response to mean ‘an ammunition magazine for a handgun or any type of ammunition magazine.’¹²⁰ In response to a request by one of the officers, the defendant revealed “the location of the gun that was associated with the ammunition clip.”¹²¹ He indicated that the gun could be found under the car’s front seat.¹²² The officers retrieved the weapon from that location and transported the defendant to police headquarters.¹²³ They then discovered that the gun was used in a robbery and murder at a gas station and that the NCIC report had been maintained in the computer system in error.¹²⁴

Invoking the community caretaker doctrine, the court held that the totality of circumstances justified the sequence of events.¹²⁵ It indicated that several factors triggered the officers’ community caretaking role, the most important of which was the fact “that the officers believed [the] defendant to be an endangered missing person contained in an NCIC alert.”¹²⁶ The court also stated that it was “convinced that the officers did not perform the community caretaker function as a pretext for a criminal investigation.”¹²⁷ Completing the analysis, the court explained that “[i]n addition to harboring safety concerns as caretakers, the police lawfully accumulated information to meet the probable cause and exigency standards before searching [the] defendant’s car.”¹²⁸

¹¹⁶ *Diloreto*, 180 N.J. at 272, 850 A.2d at 1231.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 273, 850 A.2d at 1231.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*, 850 A.2d at 1232.

¹²² *Diloreto*, 180 N.J. at 273, 850 A.2d at 1232.

¹²³ *Id.* at 273–74, 850 A.2d at 1232.

¹²⁴ *Id.* at 274, 850 A.2d at 1232.

¹²⁵ *Id.* at 277, 850 A.2d at 1234.

¹²⁶ *Id.* at 278, 850 A.2d at 1235.

¹²⁷ *Id.* at 280, 850 A.2d at 1236.

¹²⁸ *Diloreto*, 180 N.J. at 282, 850 A.2d at 1237.

I already have discussed the last two search-and-seizure cases decided in the 2003-2004 term of the court, *State v. Pineiro*¹²⁹ and *State v. Moore*.¹³⁰

Allow me to end as I began: the jurisprudence of the New Jersey Supreme Court in the search-and-seizure area is highly fact-sensitive. When appropriate, the court has set forth standards to guide trial courts and, presumably, to achieve some sense of uniformity in the case law. Placing those decisions alongside existing decisions in the overall mosaic of law is both challenging and intellectually rewarding. And important constitutional rights always are at stake.

¹²⁹ 181 N.J. 13, 853 A.2d 887 (2004).

¹³⁰ 181 N.J. 40, 853 A.2d 903 (2004).