

Fall Municipal Court Law Review 2017

1. Dash cam video in fatal shooting public record

North Jersey Media Group, Inc. v. Township of Lyndhurst

NJMG was entitled to disclosure of unredacted Use of Force Reports, under OPRA, and dash-cam recordings of the incident, under the common law. Investigative reports, witness statements, and similarly detailed records were not subject to disclosure at the outset of the investigation, when they were requested.

2. Canine dog sniff cannot be long delay

State v. Dunbar

The Court adopts the federal standard barring unnecessary delays for the purpose of canine sniffs. Officers do not need reasonable suspicion of a drug offense provided that the canine sniff does not prolong the stop beyond the time required to complete the stop's mission. (A-94-15; 077839)

3. Defendant had a constitutional right to possess the machete in his home

State v. Montalvo 226 N.J. 212 (2017)

The right to possess a weapon in one's own home for self-defense would be of little effect if one were required to keep the weapon out-of-hand, picking it up only "spontaneously." Defendant had a constitutional right to possess the machete in his home for his own defense and that of his pregnant wife. Because the trial court's instructions did not convey this principle, the instructions were erroneous. Further, because the erroneous instructions were capable of producing an unjust result in this matter, they constitute plain error.

4. GPS tracking device by police not barred

State v McDuffie

The court examined defendants' attack on the State's exercised privilege, refraining from disclosing information regarding details related to a global positioning system (GPS) tracking device used to prove their involvement in two burglaries. The court rejected defendants' constitutional attacks and upheld the privilege granted by N.J.R.E. 516 and N.J.S.A. 2A:84A-28, defining the guidelines reviewed when weighing disclosure in light of the asserted privilege. These include: (1) whether defendant demonstrates a particularized need for disclosure related to advance a stated defense; (2) whether the opportunity to cross-examine the officer, asserting non-disclosure based on privilege, satisfies a defendant's need to challenge the credibility of the testifying witness; (3) whether law enforcement provided required corroborating evidence extrinsic to the GPS, to protect a defendant's rights of confrontation and fair trial; and (4) whether a defendant has the opportunity to provide expert testimony to attack the evidence without disclosure of the requested information.

5. NJ had jurisdiction for criminal spam attack on NJ business

State v Tringali

The State alleged that, acting in Florida, defendant paid an accomplice to launch spam attacks on a website that was integral to a New Jersey internet-based business, for the purpose of harming the business owner. The Appellate Division reversed an order dismissing the indictment charging defendant with the offenses of disrupting or impairing computer services, N.J.S.A. 2C:20-25(b), and

impersonating another for the purpose of obtaining a benefit or depriving another of a benefit, N.J.S.A. 2C:21-17(a)(1). As to both offenses, the harmful result to the victim is an "element" of the offense, within the meaning of the territorial jurisdiction statute, N.J.S.A. 2C:1-3(a)(1) and -3(g). Because the prosecutor produced some evidence that the New Jersey victims suffered harm in this State, which was an element of each computer crime statute, New Jersey has territorial jurisdiction to prosecute defendant for those offenses. Therefore, the trial court erred in dismissing those counts of the indictment for lack of territorial jurisdiction.

A-1262-15T1

6. OPRA can also require electronically stored data.

John Paff v. Galloway Township

The Appellate Division's overly constrictive reading of OPRA cannot be squared with the OPRA's objectives or statutory language. OPRA recognizes that government records will constitute not only paper documents, but also information electronically stored. The fields of information covering "sender," "recipient," "date," and "subject" in the emails sent by the Galloway Township Chief of Police and Clerk over a two-week period are government records under OPRA.

7. Mandatory DNA samples in serious Municipal court criminal

Anyone who pleads guilty to most criminal disorderly criminal offenses must provide a DNA sample upon a guilty plea.

Effective July 1, 2017, the New Jersey Department of Law and Public Safety will require DNA collection for 19 disorderly persons offenses at the time of conviction. The State Police memo dated May 12, 2017 can be viewed

http://www.njsmpa.org/pdfs/codis_dna_collection.pdf

At the time of collection, the offender's identity must be electronically verified via the LiveScan machine using the Criminal Inquiry option, not Criminal Arrest as Criminal Arrest prints were already taken at the time of arrest. Care must be taken to avoid taking Criminal Arrest prints from a subject for the same offense twice.

2C:12-1 Assaults

2C:35-10 All drug charges and Paraphernalia

2C:34-1 Prostitution

8 Operation in DWI requires proof

State v. Decicco App. Div. unreported

A trooper, responding to a report about an "erratic driver," found a car parked in a field at a campground. Defendant was in the driver's seat holding a can of beer in his hand. The keys were in the ignition, but the engine was not running. Trooper testified that he could feel heat coming from the front of the car and heard crackling sounds from the engine. Defendant admitted drinking beer, said he was at the campground to pick up his mail and was staying to "sleep[] it off." Defendant failed field sobriety tests and his BAC measured 0.09. On appeal, defendant contended that the state failed to show that he "operated" a vehicle. The court found that the state failed to meet its burden of proof because defendant's admission that he had driven to the campground did not establish a timeline to show that he was intoxicated when he did so and the state produced no eyewitnesses to defendant's alleged erratic driving. Additionally, the trooper admitted that the warmth from the car engine might have been from defendant running the air conditioner while parked.

Unreported source ***New Jersey Law Journal*** April 6, 2017

9. No blood draw without warrant unless exigency

State of New Jersey v. Smiejan, N.J. Super. App. Div. Unreported

Appellant was involved in an accident in which he struck two parked cars. While at the hospital for his injuries, a sample of his blood was taken without his consent or a search warrant; subsequent testing established his blood alcohol content was above the legal limit. Appellant moved for, and was denied suppression of the BAC evidence. The court noted there were exigent circumstances, which existed because of the delays inherent in the warrant application process. On appeal, appellant argued that the seizure of his blood violated the Fourth Amendment, the Supreme Court's *Missouri v. McNeely* ruling applied which held that dissipation did not constitute an exigency, and ineffective assistance of counsel. The court reversed holding the trial court erred in relying upon the municipal judge's past experience as a factual basis to find the existence of an adequate exigency. The court further held there were no meaningful factual findings made by either the municipal court judge or the law division judge. Finally, the court stated that, pursuant to *McNeely*, the case was to be remanded to determine whether the circumstances warranted the admission of the blood draw as the trial court failed to determine under the totality of the circumstances whether exigency existed thereby negating a need for a warrant. Accordingly, the court reversed and remanded.

Source

<http://www.njlawjournal.com/id=1202784736777/Unpublished-Opinions-for-the-Week-of-May-1-2017?mcode=0&curindex=0&curpage=3>

10. Even if the request to search were not lawful, defendant's flight attenuated the seizure from the alleged improper police conduct

State v. Lopez N.J. Super. App. Div. unreported

Defendant appealed the denial of his motion to suppress evidence and his sentences. Police made a motor vehicle stop of defendant's vehicle, observed that defendant was nervous, saw a large amount of cash in the center console, suspected drug activity and requested consent to search the car. Defendant initially agreed, then drove away throwing a black object out of the car. Defendant eventually stopped and was arrested. The police found a plastic bag-containing heroin near where defendant threw the object from the car. At the hearing on the motion to suppress, the trial judge found the stop was lawful because of the inoperable brake light and defendant's change of lanes without signaling. The court found that sufficient credible evidence supported the stop and the request to search.

Even if the request to search were not lawful, defendant's flight attenuated the seizure from the alleged improper police conduct. Source NJLJ (14-2-3291) unreported

11. Strip search after marijuana arrest not permitted

State v. Jules, N.J. Super. App. Div. unreported

Appellant appealed from his conviction for third-degree possession of alprazolam (Xanax). Appellant's appeal focused solely on the denial of his motion to suppress evidence obtained from a strip search, which police conducted at their headquarters after his arrest. In denying appellant's motion, the judge found

the officer had reasonable articulable suspicion justifying the initial stop, probable cause for the arrest and that the strip search was lawful under the search incident to arrest exception to the warrant requirement. Appellant did not dispute the initial stop or the arrest; appellant argued that the police acted unlawfully by subjecting him to a strip search without first obtaining a warrant.

On appeal, the court-reversed denial holding the officer's suspicion that the item in appellant's groin area was a prescription pill bottle did not establish probable cause that appellant committed the named offense. The court found there was no "objectively reasonable" basis to arrest appellant for possession of prescription pills, only that there was probable cause to arrest him for marijuana possession. Therefore, the police could not use the search incident to arrest exception to circumvent the protections that arose from appellant's arrest. Furthermore, exigency could not support the search once the police handcuffed and secured appellant. Finally, the court found the "plain feel" exception inapplicable because the object believed to be a prescription pill bottle did not make it "immediately apparent" that the bottle contained contraband. Accordingly, the court reversed denial of suppression and remanded for dismissal of the judgment of conviction.

Source NJLJ Daily briefing

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Next seminars

November 21, 2017 **A Review of the Major Municipal Court Cases from 2016** MCBA

Office, 87 Bayard Street, New Brunswick 2:00 p.m.- 4pm

Info Contact: MCBA Jonathan Cowles jcowles@mcbalaw.com

Phone: 732.828.3433, x. 102

January 10, 2018 NJICLE webinar-

The "New" Cases and the "Oldies and Goodies" Every Municipal Court Practitioner Needs to Know

noon-1:40pm

March 19, 2018 Municipal Court College seminar

5:30pm-9:00pm

NJ Law Center, New Brunswick

**Nuts & Bolts of Elder Law & Estate Administration Annual Seminar for
Attorneys and individuals involved in Probate**

May 7, 2018 5:00 PM- 9:00 PM NJ Law Center

Photo page 1 NJSBA Annual Meeting Ethics program Kenneth Vercammen Christina
Vassiliou Harvey, Jason T. Komninos photo