

January 8, 2016

1. 2016 update Wills and Estate Planning- Free Seminar, January 13, 2016; Wednesday 12:15PM-1PM and again 5:15PM-6PM at the Law Office of Kenneth Vercammen, 2053 Woodbridge Ave, Edison, NJ 08817.

2. Major Change in law permits car search if police have probable cause to believe that the vehicle contains contraband or evidence of crime. State v. Witt __ NJ __ (2015) Warrantless auto search permitted on probable cause in lengthy opinion.

E485

1. 2016 update Wills and Estate Planning- Free Seminar, January 13, 2016; Wednesday 12:15PM-1PM and again 5:15PM-6PM at the Law Office of Kenneth Vercammen, 2053 Woodbridge Ave, Edison, NJ 08817.

COST: Free if you pre-register by email. Complimentary materials will be provided at 12:00PM Sharp. We previously held this seminar for the Metuchen and Edison Adult Schools. The program is limited to 15 people. Please bring a canned food donation, which will be given to a community food bank. For attorneys, a more detailed program will be held April 18th from 5:00PM to 9PM at the NJ Law Center. Please email us if you plan on attending or if you would like us to email the materials.

SPEAKER: Kenneth Vercammen, Esq.

(Author-Answers to Questions About Probate)

The NJ Probate Law made a number of substantial changes in Probate and the administration of estates and trusts in New Jersey.

2. Major Change in law permits car search if police have probable cause to believe that the vehicle contains contraband or evidence of crime. State v. Witt __ NJ __ (2015) Warrantless auto search permitted on probable cause.

The NJ Supreme Court Held: exigent-circumstances standard set forth in Pena-Flores is unsound in principle and unworkable in practice. Citing Article I, Paragraph 7 of New Jersey's State Constitution, the Court returns to the standard articulated in State v. Alston, 88 N.J. 211 (1981), for warrantless searches of automobiles based on probable cause: The automobile exception authorizes the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous.

In this appeal, the Court addresses the constitutional standard governing an automobile search and considers whether to continue to follow the standard set forth in State v. Pena-Flores, 198 N.J. 6 (2009).

Defendant William L. Witt was charged in an indictment with second-degree unlawful possession of a firearm and second-degree possession of a weapon by a convicted person. The police initiated a stop of defendant's car because he did not dim his high beams when necessary, and a search of his vehicle uncovered the

handgun.

Defendant moved to suppress the gun on the ground that the police conducted an unreasonable search in violation of the New Jersey Constitution. Defendant's sole argument was that the police did not have exigent circumstances to justify a warrantless search of his car under *Pena-Flores*. At the suppression hearing, Officer Racite testified that at approximately 2:00 a.m., while providing backup for a motor-vehicle stop, he observed a car pass with its high beams on.

The officer explained that a car must dim its high beams "as vehicles approach." Thus, Officer Racite stopped the vehicle, and requested backup. Defendant, the driver, appeared intoxicated and was asked to exit his car. Defendant then failed field-sobriety and balance tests, and Officer Racite arrested him for driving while intoxicated. Defendant was handcuffed and placed in the back of a patrol car. While Officer Racite searched defendant's vehicle for "intoxicants," he found a handgun in the center console. With *Pena-Flores* as its guide, the trial court found as follows: the officer had a right to stop defendant's car based on an "unexpected" occurrence and had probable cause to search for an open container of alcohol, but did not have "sufficient exigent circumstances" to conduct a warrantless search. Accordingly, the court suppressed the handgun.

The Appellate Division granted the State's motion for leave to appeal and affirmed the suppression of the gun "because of the utter absence of any exigency to support the warrantless vehicle search that occurred," and "because there was no justification for this motor vehicle stop." 435 N.J. Super. 608, 610-11 (App. Div.

2014). The panel declined to address the State's argument that the exigent-circumstances test in Pena-Flores "should be replaced because it has proved to be unworkable and has led to unintended negative consequences," explaining that, as an intermediate appellate court, it had no authority to replace Pena-Flores with some other legal principles.

The panel also agreed with defendant's argument, raised for the first time on appeal, that Officer Racite did not have a reasonable and articulable suspicion to stop defendant because the relevant statute (N.J.S.A. 39:3-60) requires drivers to dim their high beams only when approaching an oncoming vehicle within 500 feet.

Resolution of the issue before the Court implicates the doctrine of stare decisis. Because stare decisis promotes consistency, stability, and predictability in the development of legal principles and respect for judicial decisions, a "special justification" is required to depart from precedent. That said, stare decisis is not an inflexible principle depriving courts of the ability to correct their errors. Among the relevant considerations in determining whether to depart from precedent are whether the prior decision is unsound in principle and unworkable in practice. The Court, therefore, turns to consider whether Pena-Flores is furthering the constitutional values that are protected by the New Jersey Constitution and whether there is "special justification" for departing from it.

The use of telephonic search warrants has not resolved the difficult problems arising from roadside searches, as the Court expected when it decided Pena-Flores. Prolonged encounters on

the shoulder of a crowded highway may pose an unacceptable risk of serious bodily injury and death to both police officers and citizens. Moreover, the seizure of the car and the motorist's detention may be a greater intrusion on a person's liberty interest than the search is on a person's privacy interest. Finally, the dramatic increase in the number of consent searches since Pena-Flores is apparently an unintended consequence of that decision, reflecting the difficulty presented to police officers by the Pena-Flores multi-factor exigent-circumstances standard. The Court is concerned about consent searches in such great numbers, particularly in light of the historic abuse of such searches and the coercive effect of a search request made to a motorist stopped on the side of a road. The Court, therefore, concludes that the current approach to roadside searches premised on probable cause places significant burdens on law enforcement without any real benefit to the public.

Although the Court determines that the exigent-circumstances standard set forth in Cooke and Pena-Flores is unsound in principle and unworkable in practice, it does not adopt the federal standard for automobile searches because it is not fully consonant with the interests embodied in Article I, Paragraph 7 of the State Constitution. The Court returns to the Alston standard, which states that the automobile exception authorizes the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous. The Court's decision limits the automobile exception to on-scene warrantless searches, unlike federal jurisprudence, which allows a police officer to conduct a warrantless search at headquarters merely because the officer

could have done so on the side of the road.

The Court's decision is a new rule of law to be applied prospectively. Therefore, for purposes of this appeal, Pena-Flores is the governing law. However, going forward, the exigent-circumstances test in Cooke and Pena-Flores no longer applies, and the standard set forth in Alston for warrantless searches of automobiles based on probable cause governs.

The judgment of the Appellate Division is **AFFIRMED**, and the matter is **REMANDED** to the trial court for proceedings consistent with this opinion.

Editorial Assistance provided by Dhruv Patel. Mr. Patel currently attends Rutgers University and is participating in Kenneth Vercammen's Winter Break Internship Program.

■■■■If you are happy with our services, please be sure to:

If you are happy with our services, please be sure to:

Like us and post your testimonial on Facebook:

<https://www.facebook.com/Kenneth-Vercammen-Associates-PC-Law-Office-Edison-NJ-08817-149816077985/>

Endorse us on LinkedIn:

<https://www.linkedin.com/in/kennethvercammen>

Editorial Assistance Provided by Juhi Duggirala. Ms. Duggirala

participating in Ken Vercammen's Fall Internship Program currently attends Kean University.

Editor's Note and Disclaimer:

All materials Copyright 2015. You may pass along the information on the NJ Laws Newsletter and website, provided the name and address of the Law Office is included.

KENNETH VERCAMMEN & ASSOCIATES, PC

ATTORNEY AT LAW

2053 Woodbridge Ave.

Edison, NJ 08817

(Phone) 732-572-0500

(Fax) 732-572-0030

Website: www.njlaws.com