

Search And Seizure Law In New Jersey—A Primer

May 29, 2012 | by Matheu Nunn

The other day, after we published my [blog post](#) about the New Jersey Supreme Court's "Animal House" decision, I received some emails about police searches in general. So, in response, I thought the below primer may be helpful to understand what the police can and cannot do to you, your car, and your home. I should note that search and seizure issues are among the most fact-sensitive aspects of a criminal case.

As a starting point, both the [United States Constitution's](#) 4th Amendment and the [New Jersey Constitution](#) Article 1, Paragraph 7 (yes, there is more than one constitution) guarantee the right of the people to be free from unreasonable searches or seizures. Generally, a warrant is required to sustain the reasonableness of a search or the propriety of a seizure. These constitutional rights are tempered by the exceptions set forth by both the United States Supreme Court and New Jersey Supreme Court.

But, what happens if the police did not utilize a search warrant? Well, where any search or seizure is challenged by a defendant through a motion to suppress at the trial court, the burden is on the State to establish the constitutionality of the search. Side note: if the State prevails at the trial court level, on appeal, the record is reviewed by the Appellate Division (the court of appeals) to determine whether: (1) the findings are supported by sufficient credible evidence and (2) the legal conclusions are valid. *State v. Yohnnson*, 204 N.J. 43, 62 (2010).

Non-legalese translation? Your best shot is to win at the trial level...

Back to the exceptions to the warrant requirement (keep in mind, these are, for the most part, judge-made doctrines and, thus, subject to change, narrowing, or elimination). Without further ado, the notable search warrant exceptions are as follows:

1. Plain view;
2. Plain Smell;

3. Search Incident to Arrest;
4. Exigent Circumstances (and the automobile exception);
5. Inventory Search;
6. Consent Search;
7. Community Caretaking;
8. Protective Search or Sweep;
9. Regulatory or Administrative Search.

Other Exceptions to Searches without a Warrant:

For automobile searches, *State v. Pena–Flores*, 198 N.J. 6, 18 (2009) is the governing case in New Jersey. In essence, courts must consider the following factors when deciding whether the warrantless search of a motor vehicle ran afoul of the Fourth Amendment and the New Jersey Constitution:

- (1) the time of day;
- (2) the location of the stop;
- (3) the nature of the neighborhood;
- (4) the unfolding of the events establishing probable cause;
- (5) the ratio of officers to suspects;
- (6) the existence of confederates who know the location of the car and could remove it or its contents;
- (7) whether the arrest was observed by passersby who could tamper with the car or its contents; and
- (8) whether it would be safe to leave the car unguarded and, if not, whether the delay that would be caused by obtaining a warrant would place the officers or the evidence at risk.

This exception is often relied on by the State where a vehicle is stopped late at night and the police feel they have some basis to search the entirety of the vehicle—but do not believe they have time for

(or, simply do not want to wait for) a judge to sign a search warrant.

For Plain View, *State v. Johnson*, 171 N.J. 192, 206–07 (2002) provides the guiding principles for courts in New Jersey. Under this exception, a warrant is not required to perform a search when a police officer is

(1) lawfully present in the viewing area,

(2) the officer inadvertently discovers the evidence in plain view, and

(3) it is “immediately apparent” to the police officer that the “items in plain view were evidence of a crime, contraband, or otherwise subject to seizure.”

This exception is often used by the State when police “observe” drugs or other contraband in a vehicle.

For a Search Incident to Arrest, *State v. Hill*, 115 N.J. 169, 173 (1989) provides one of the better explanations of the exception. Essentially, this exception provides that when a suspect is lawfully placed under arrest, a law enforcement officer may conduct a search of the person of the suspect as well as the area within the suspect’s immediate control. The foundation of this exception is officer safety and the risk of destruction of evidence within the immediate control of a suspect. That said, the search must be contemporaneous to the arrest. *State v. Bradley*, 291 N.J. Super. 501 (App. Div. 1996). This exception, among other things, is what allows an arrestee (someone who has been arrested) to have items seized from their body and clothing.

For Consent Searches, *State v. Carty*, 170 N.J. 632 (2002) highlights the guideposts for courts. As a starting point it should be noted that consent searches under the New Jersey Constitution are afforded a higher level of scrutiny than their federal counterpart. The burden is on the State to show that the individual giving consent knew that he or she “had a choice in the matter.” Moreover, “in order for a consent to search a motor vehicle and its occupants to be valid, law enforcement personnel must have a reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent to search a lawfully stopped motor vehicle.” In other words, in the motor vehicle context, law enforcement personnel cannot ask every individual they stop for consent to search the vehicle. That said, whether in

a car or in the home, only a person with “authority” to consent to the search may do so. *See, e.g., State v. Earls*, 420 N.J. Super. 583 (App. Div. 2011). This is a big one—if the State can establish that consent has been provided for a search, courts will essentially say “oh well, you consented.”

For Community Caretaking issues, *State v. Diloreto*, 180 N.J. 264, 275 (2004) provides a good discussion of this exception. The “community caretaking” doctrine applies when the police are engaged in functions that are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. *State v. Adubato*, 420 N.J. Super. 167 (App. Div. 2011). As noted in *Diloreto*, community caretaking is based on the notion that police serve to ensure the safety and welfare of the citizenry at large. This exception used to be more widely used by the State. It was, essentially, a “catch-all” exception. The Appellate Division has refined this exception over the years, most recently in *State v. Kaltner*, which I wrote about last week.

For an Inventory Search, *State v. Mangold*, 82 N.J. 575, 587 (1980) and *Colorado v. Bertine*, 479 U.S. 367, 372–74, 107 S.Ct. 738, 742, 93 L.Ed.2d 739, 747 (1987), provide good explanations of this exception. In New Jersey, if a vehicle is lawfully impounded and its owner or permissive user is present, that person must be given the option of either consenting to the inventory or making his own arrangements for the safekeeping of the property contained in the vehicle. Absent consent or alternative security provisions, an inventory may be not undertaken. In such cases the vehicle owner or user will be presumed to have assumed the risk for any claims of property loss or theft arising from the impoundment. Don’t be fooled—if your car is impounded by the police, you do not have to consent to having an inventory search of your car performed. However, if, for example, you had a \$10,000 rolex in the car, and it gets stolen out of your impounded car, there is nothing you can do if you refused the inventory search.

For an Administrative Search, *State v. Hewitt*, 400 N.J. Super. 376 (App. Div. 2008) sets the score. This exception applies only if three criteria are satisfied: First, there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made; second, the warrantless inspections must be necessary to further the regulatory scheme; and third the statute’s inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. *See also New York v. Burger*, 482 U.S. 691, 702-03, 107 S.Ct. 2636, 2643-44, 96 L.Ed.2d 601, 613-14 (1987). Although you may not know it, you often

read about this search in action—“police seize 300 pounds of pot from 18-wheeler on Route 287”. Administrative searches allow police officers to “search” without a warrant pursuant to a regulatory scheme.

If you or a loved one are arrested and evidence against you is seized (with or without a warrant), it is important for you to obtain legal representation. The above information is a scintilla of the law of search and seizure in New Jersey. The seizure of evidence to be used against you may be like the base of a house of cards. If you can successfully challenge a search and seizure of evidence, the rest of the case may fall apart. A skilled criminal defense attorney can identify the search and seizure issues and either file the appropriate motion to address those issues, or, in the alternative, highlight those issues to the prosecuting agency. A worthy prosecutor knows the pitfalls of his or her case and, if presented to him or her in the appropriate manner, may be willing to plea bargain or dismiss the charges against you.