

1. Prosecutor must provide videotape and audiotape plus names of officers from other towns involved in stop

State v. Stein 225 NJ 582 (2016)

Under Rule 7:7-7(b), the municipal prosecutor was required to provide defendant with the names of the police officers from the adjacent jurisdiction who responded to the accident scene. Because, when the prosecutor failed to provide the information, defendant did not raise this issue before the municipal court, or seek relief under the Rule, the issue has been waived. The prosecutor was also required to provide the videotapes that defendant requested, if they existed, since such information was clearly relevant to a DWI defense. Because the Court cannot determine from the record whether any videotapes exist, the matter is remanded to the Law Division for further proceedings on this issue.

2. Suppression where stop based only for high beam State v. Scriven 226 NJ 20 (2016)

The trial court and Appellate Division properly concluded that the motor-vehicle stop violated the Federal and State Constitutions. The language of the high-beam statute, N.J.S.A. 39:3-60, is unambiguous; drivers are required to dim their high beams only when approaching an oncoming vehicle. Neither a car parked on a perpendicular street nor an on-foot police officer count as an oncoming vehicle. The judgment of the Appellate Division upholding the trial court's suppression of the evidence is affirmed.

3. Third Party did not have authority to consent to search of premises State v. Cushing 226 NJ 187 (2016)

The record contains ample evidence to support the Appellate Division's conclusion that Betty Cushing did not have actual authority to consent to the search of defendant's room, and Betty could not have conferred through any power of attorney an authority that she did not possess herself. In addition, it was not objectively reasonable for Officer Ziarnowski to rely on an apparent authority by Lisa Mylroie as the basis for valid third-party consent to his initial search of defendant's bedroom.

4. Search warrant did not permit search of persons off premises State v. Bivins 226 NJ 1 (2016)

Because the State did not provide adequate proof that the individuals found in a car had been present at the targeted residence when the warrant was being executed moments before their apprehension, the warrant did not provide authority for the search of the two off-premises individuals.)

5. No search warrant needed for some Cell phone records State v. Lunsford 226 NJ 129 (2016)

As a long-standing feature of New Jersey law, telephone-billing records are entitled to protection from government access under the State Constitution. Because they reveal details of one's private affairs that are similar to what bank and credit card records disclose, these areas of information should receive the same level of constitutional protection and be available based on a showing of relevance. Direct judicial oversight of the process is required to guard against the possibility of abuse, and in order to obtain a court order requiring production of telephone billing records, the State must present specific and articulable facts to demonstrate that the records are relevant and material to an ongoing criminal investigation.

6. Police video is public record under OPRA Paff v Ocean County Prosecutors Office 446 NJ Super. 163 (App. Div. 2016)

(MVRs) in police vehicles - which, in accordance with the police chief's written policy order, are generated automatically whenever the vehicle's overhead lights are activated - are "government records" subject to disclosure under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. Appellant Ocean County Prosecutor's Office failed to carry its statutory burden to show that the films fall within an exception under OPRA. Judge Gilson dissents.

7 No automatic right to discovery of other files State v. Hernandez 225 NJ 451 (2016)

Although the discovery rule generally requires that the State provide all evidence relevant to the defense of criminal charges, it does not open the door to foraging through files of other cases in search of relevant evidence. The discovery ordered by the trial court and Appellate Division exceeds the limits of Rule 3:13-3(b) and is not supported by this Court's jurisprudence.

8. Prosecutor used improper arguments of victim's state of mind State v Ravi __ NJ Super. __ Defendant was convicted of multiple counts of invasion of privacy, bias intimidation, hindering prosecution, and tampering with evidence. The jury found defendant guilty on four counts directly predicated on N.J.S.A. 2C:16-1(a)(3), a now constitutionally defunct law pursuant to the Supreme Court's holding in State v. Pomianek, 221 N.J. 66, 69 (2015). The State conceded that the convictions under these four counts are void as a matter of law. A-4667-11T1

9. Expert should not be permitted to testify on ultimate issue. State v. Simms 224 NJ 393 (2016)

Expert testimony that “embraces an ultimate issue to be decided by the trier of fact,” N.J.R.E. 704, is not admissible unless the subject matter is beyond the ken of the average juror. State v. Nesbitt, 185 N.J. 504, 515-16, 519 (2006). Expert testimony is not necessary to tell the jury the “obvious” or to resolve issues that the jury can figure out on its own. In addition, a prosecutor may not “summarize straightforward but disputed evidence in the form of a hypothetical and then elicit an expert opinion about what happened.” State v. Sowell, 213 N.J. 89, 102 (2013).

The erroneously assumed fact in the hypothetical question—that the object in defendant’s hand was a bundle of heroin packets—unfairly buttressed the State’s case. It was for the jury to decide the identity of the object based on an examination of the totality of the evidence. The ultimate-issue testimony on conspiracy, moreover, impermissibly intruded into the jury’s singular role as trier of fact.

**10. No automatic rejection for PTI
State v Rizzitello**

Defendant was indicted on a single count of fourth-degree operating a motor vehicle during the period of license suspension for a second or subsequent conviction for driving while intoxicated, in violation of N.J.S.A. 2C:40-26(b). The State appeals from the order of the trial court which admitted defendant into PTI over the prosecutor's veto. The court reversed. The prosecutor's decision to reject defendant's application for admission into PTI did not constitute "a patent and gross abuse of discretion" as defined by the Supreme Court in State v. Roseman, 221 N.J. 611, 625 (2015).

The court rejects the prosecutor's characterization of the fourth degree offense under N.J.S.A. 2C:40-26(b) as falling within the crimes that by their very nature carry a presumption against admission into PTI. A-0536-15T2

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Cost: \$30-Young Lawyers; \$40-MCBA Members; and \$75-All Others

We thank Summer Blast Happy Hour July 15 attendees

The party at Bar Anticipation was a good time. We thank over 160 professionals and friends who attended the Summer Blast Happy Hour & Networking Social at Bar Anticipation. My family and I had a great time catching up with old friends and meeting new ones.

We appreciate the many attendees donated canned goods donated which were donated to St. Matthews Edison Food Pantry.

NJSBA Happy hour Facebook photos

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We thank the co-sponsors sponsors for the Happy Hour the NJ State Bar Association Sections and Committee, Greater Monmouth Chamber of Commerce, Monmouth County Bar Association, Retired Police & Fire Middlesex Monmouth Local 9, NJ Lakewood Chamber of Commerce.

Special thanks to our volunteers who checked in the guests and gave out wristbands and who helped hang up the banners. Mark you calendar for the 2017 Summer Happy Hour July 14, 2017 Friday 5:30-7:55.

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Kenneth Vercammen is an Edison, Middlesex County, NJ trial attorney where he handles Criminal, Municipal Court, Probate, Civil Litigation and Estate Administration matters. Ken is author of the American Bar Association's award winning book "Criminal Law Forms" and often lectures to trial lawyers of the American Bar Association, NJ State Bar Association and Middlesex County Bar Association. As the Past Chair of the Municipal Court Section he has served on its board for 10 years.

Awarded the Municipal Court Attorney of the Year by both the NJSBA and Middlesex County Bar Association, he also received the NJSBA- YLD Service to the Bar Award and the General Practitioner Attorney of the Year, now Solo Attorney of the Year.

Ken Vercammen is a highly regarded lecturer on both Municipal Court/ DWI and Estate/ Probate Law issues for the NJICLE- New Jersey State Bar Association,

American Bar Association, and Middlesex County Bar Association. His articles have been published by NJ Law Journal, ABA Law Practice Management Magazine, YLD Dictum, GP Gazette and New Jersey Lawyer magazine. He was a speaker at the 2013 ABA Annual meeting program “Handling the Criminal Misdemeanor and Traffic Case” and serves as is the Editor in Chief of the NJ Municipal Court Law Review.

For nine years he served as the Cranbury Township Prosecutor and also was a Special Acting Prosecutor in nine different towns. Ken has successfully handled over one thousand Municipal Court and Superior Court matters in the past 27 years.

His private practice has devoted a substantial portion of professional time to the preparation and trial of litigated matters. Appearing in Courts throughout New Jersey several times each week on Criminal and Municipal Court trials, civil and contested Probate hearings. Ken also serves as the Editor of the popular legal website and related blogs. In Law School he was a member of the Law Review, winner of the ATLA trial competition and top ten in class.

Throughout his career he has served the NJSBA in many leadership and volunteer positions. Ken has testified for the NJSBA before the Senate Judiciary Committee to support changes in the DWI law to permit restricted use driver license and interlock legislation. Ken also testified before the Assembly Judiciary Committee in favor of the first-time criminal offender “Conditional Dismissal” legislation which permits dismissal of some criminal charges. He is the voice of the Solo and Small firm attorneys who juggle active court practice with bar and community activities. In his private life he has been a member of the NJ State champion Raritan Valley Road Runners master’s team and is a 4th degree black belt.

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