21 Investigations

21.10 Motor Vehicle Stops

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21.10.1 Introduction

The law enforcement procedure of stopping a motor vehicle, and detaining its driver or other occupants, is a "seizure" within the meaning of both the Fourth Amendment to the United States Constitution,[1] and Article I, paragraph 7, of the New Jersey Constitution,[2] "even though the purpose of the stop is limited and the resulting detention quite brief."[3] As such, the procedure must be justified under the Constitution.[4]

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[1] *Whren v. United States*, 517 *U.S.* 806, 810, 116 *S.Ct.* 1769, 1772 (1996); *Michigan v. Sitz*, 496 *U.S.* 444, 110 *S.Ct.* 2481, 2485 (1990); *United States v. Hensley*, 469 *U.S.* 221, 226, 105 *S.Ct.* 675, 679 (1985); *Delaware v. Prouse*, 440 *U.S.* 648, 653, 99 *S.Ct.* 1391 (1979); *United States v. Martinez-Fuerte*, 428 *U.S.* 543, 556-58 (1976); *United States v. Brignoni-Ponce*, 422 *U.S.* 873, 878 (1975).

[2] *State v. Kadelak*, 258 *N.J. Super.* 599, 602-03 (App.Div. 1992) (*Kadelak I*); *State v. Foley*, 218 *N.J. Super.* 210, 215 (App.Div. 1987); *State v. Kirk*, 202 *N.J. Super.* 28, 56 (App.Div. 1985). A police officer who made a U-turn to follow defendant, who was on a bicycle, but did not illuminate overhead lights or order defendant to stop, did not seize defendant. Therefore, defendant's abandonment of cocaine was not the result of an illegal seizure. *State v. Hughes*, 296 *N.J.* Super. 291, 296 (App.Div.1996) certif. denied 149 *N.J.* 410 (1997).

[3] *Prouse* at 653, 99 *S.Ct.* at 1396.

[4] There is no enhanced protection by the N.J. Constitution regarding what constitutes a seizure." *Hughes* at 296.

In *Terry v. Ohio*,[5] the United States Supreme Court set forth the constitutional justification for a seizure of a person. *Terry* held, for the first time, that a law enforcement officer may stop and detain a person on the street, or in another public place, in the absence of probable cause for an arrest. To justify this police-citizen encounter—generally called an "investigative detention" or an "investigative stop"[6] — the Court in *Terry* held that the police must have a reasonable articulable suspicion of criminal activity. This level of belief is something more than a *mere* suspicion but less than the probable cause standard needed to support an arrest or a search. It requires the investigating officer to articulate specific facts "which, taken together with rational inferences from those facts,"[7] collectively provide "'a particularized and objective basis' for suspecting the person of criminal activity."[8]

The question whether an officer had a reasonable suspicion to support a particular investigative detention will be addressed by the courts by reference to an "objective" standard.[9] Would the facts available to the officer at the moment of the stop warrant an officer "of reasonable caution in the belief that the action taken was appropriate."[10] The "reasonable suspicion standard is treated as a "'commonsense, nontechnical conception'" that deals with "'the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act.'"[11] To determine if the standard has been met in a particular case, a court will give due weight, not to an officer's *unparticularized* suspicions or hunches, but to the "*specific reasonable inferences*" which the officer is entitled to draw from the facts in light of his or her experience.[12]

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[5] 392 *U.S.* 1, 88 *S.Ct.* 1868 (1968).

[6] See *Ornelas v. United States*, 517 *U.S.* 690, 694, 116 *S.Ct.* 1657, 1660 (1996); *Florida v. Royer*, 460 *U.S.* 491, 500, 103 *S.Ct.* 1319, 1325 (1983); *State v. Davis*, 104 *N.J.* 490, 494 (1986).

[7] *Terry* at 21, 88 *S.Ct.* at 1880; Davis at 504, 505.

[8] *Ornelas v. United States*, *supra*, 517 *U.S.* at 696, 116 *S.Ct.* at 1661 (quoting *United States v. Cortez*, 449 *U.S.* 411, 417-18, 101 *S.Ct.* 690, 694-95 (1981).

[9] *Prouse* at 654-55, 99 *S.Ct.* 1396-97; *Terry* at 21, 88 *S.Ct.* at 1868; *Scott v. United States*, 436 *U.S.* 128, 137, 98 *S.Ct.* 1717, 1723 (1978); *Beck v. Ohio*, 379 *U.S.* 89, 96-97, 85 *S.Ct.* 223, 228 (1964).

[10] *Terry* at 22, 88 *S.Ct.* at 1880.

[11] *Ornelas* at 696, 116 *S.Ct.* at 1661 (quoting Illinois v. Gates, 462 *U.S.* 213, 231, 103 *S.Ct.* 2317, 2328 (1983), and *Brinegar v. United States*, 338 *U.S.* 160, 176, 69 *S.Ct.* 1302, 1311 (1949)).

[12] *Terry* at 27, 88 *S.Ct.* at 1883 (emphasis added). See also *Ornelas* at 1663 (due deference should be given to the inferences drawn by an officer who necessarily "views the facts through the lens of

Thus, more is required than mere generalizations and subjective impressions. The officer must be able to articulate specific facts gleaned from the "totality of the circumstances"—the whole picture—from which he or she reasonably inferred that the person confronted was involved in criminal activity.[13]

In 1979, the United States Supreme Court, in *Delaware v. Prouse*,[14] applied the *Terry* standard of reasonable articulable suspicion to the investigative detention of a motorist by a law enforcement officer— the "*motor vehicle stop*."[15] Prouse was stopped at 7:20 p.m. by a police officer. Prior to the stop, the officer had seen neither a traffic or equipment violation nor any suspicious activity. According to the officer, he stopped Prouse's car as part of his routine of checking the driver's license and registration of motorists when he "wasn't answering any complaints."[16]

Finding this officer's routine "spot check" unconstitutional, the Court in *Prouse* declared:

> This kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent. * * *
>
> Accordingly, we hold that except in those situations in which there is *at least articulable and reasonable suspicion* that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check

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his police experience and expertise").

[13] *Davis* at 504; *State v. Parks*, 288 *N.J. Super.* 407, 410 (App.Div. 1996).

[14] 440 *U.S.* 648, 99 *S.Ct.* 1391 (1979).

[15] See also *United States v. Sharp*, 470 *U.S.* 675, 682, 105 *S.Ct.* 1568, 1573 (1985) (the Fourth Amendment applies "to investigative stops of vehicles"); *United States v. Hensley*, *supra*, 469 *U.S.* at 226, 105 *S.Ct.* at 679 ("[L]aw enforcement agents may briefly stop a moving automobile to investigate a reasonable suspicion that its occupants are involved in criminal activity.")

[16] *Prouse* at 651, 99 *S.Ct.* at 1394.

> his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.[17]

The standard set forth in *Delaware v. Prouse* has been fully implemented by the New Jersey Courts.[18] The standard does not require full-blown proof that the motorist committed some sort of traffic violation. Rather, the law enforcement officer need only demonstrate a reasonable and articulable suspicion that the motorist's conduct violated a Motor Vehicle Code provision,[19] or that the motorist was involved in criminal activity.[20] Prior to a motor vehicle stop, police officers are not required, under search and seizure provisions of the *N.J.* Constitution, to wait until they observe a driver commit an apparent motor vehicle violation before they use their mobile data terminal (MDT) to process and inquiry based on the vehicle's license plate number. *State v. Donis*[21]

The "reasonable articulable suspicion" standard is an objective one. Consequently, an officer's underlying motivations leading to a motor vehicle stop are irrelevant so long as the stop is "objectively justifiable."[22] As the United States Supreme Court has held, the temporary detention

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[17] *Prouse* at 663, 99 *S.Ct.* at 1401 (emphasis added).

[18] See *State v. Carpentieri*, 82 *N.J.* 546, 548 (1980) ("*Prouse* effected a radical departure from the state of our law as it existed up until the date of that decision"); *State v. Malia*, 287 *N.J. Super.* 198, 202 (App.Div. 1996) ("[I]t is firmly settled that law enforcement officials may stop motor vehicles where they have a reasonable and articulable suspicion that a motor vehicle violation has occurred."); *State v. Johnson*, 274 *N.J. Super.* 137, 152 (App.Div. 1994) ("[T]he police may not make a random stop of an automobile, nor may the State use evidence seized while a driver was detained during an unjustified stop.") (citing *Prouse*).

[19] *State v. Williamson*, 138 *N.J.* 302, 304 (1994). See also *Whren v. United States*, *supra*, 517 *U.S.* at 810, 116 *S.Ct.* at 1772 ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."); *State v. Alston*, 279 *N.J. Super.* 39, 43 (App.Div. 1995) ("State need only prove that police had reasonable and articulable suspicion that defendant violated [a] motor vehicle statute, not that it could convict defendant of the offense."); *State v. Flowers*, 328 *N.J. Super.* 205, 218-19 (App.Div.2000)(motorist who commits at least one traffic violation, in police presence, to avoid a roadblock can be stopped.)

[20] *Alabama v. White*, 496 *U.S.* 325, 110 *S.Ct.* 2412, 2416 (1990); *State v. Merritt*, 247 *N.J. Super.* 425, 435 (App.Div. 1991); *State v. Foreshaw*, 245 *N.J. Super.* 166, 175 (App.Div.) certif.denied 126 *N.J.* 327 (1991); *State v. Wanczyk*, 201 *N.J. Super.* 258, 264 (App.Div. 1985).

[21] 157 *N.J.* 44 (1998)

[22] *Whren v. United States*, *supra*, 517 *U.S.* at 814, 116 *S.Ct.* at 1774. See also *Scott v. United* States, 436 *U.S.* 128, 138, 98 *S.Ct.* 1717, 1723 (1978) ("the fact that the officer does not have the state of

of a motorist who the police have probable cause to believe or reasonable grounds to suspect has committed a traffic violation does not become unlawful merely because the stop "deviated materially from usual police practices," in that "a reasonable officer in the same circumstances would not have made the stop for the reasons given."[23]

21.10.2 Articulable Indicators of Reasonable Suspicion

There are a wide variety of factors that may be used to build a reasonable articulable suspicion of a motor vehicle or traffic violation, or of criminal activity. Like the colored tiles making up a mosaic, all of the factors building up to reasonable suspicion must be viewed as a whole in order to determine whether the constitutional standard has been met.[24] Obviously the more factors that exist, the more likely the standard has been met. While not meant to be all inclusive, the following articulable factors may be considered as indicators of suspicion. The more factors present in a given situation, the more likely it is that the suspicion is reasonable.

Indicators of Suspicion

1. Observation of:

- a. a motor vehicle/equipment violation
- b. a traffic/moving violation
- c. a motorist who appears too young to be licensed
- d. an unconventional parking position
- e. unusually slow driving in a residential neighborhood in the very early morning hours
- f. weapons / ammunition in the vehicle
- g. containers of alcohol / drugs / paraphernalia in or near the vehicle
- h. motorist's flight coupled with other criminally-related factors
- i. a drug-related transaction

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mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action"); *United States v. Villamonte-Marquez*, 462 *U.S.* 579, 584 n.3, 103 *S.Ct.* 25732577 n.3 (1983) (ulterior motives do not serve to strip law enforcement officials of their legal justification); *United States v. Robinson*, 414 *U.S.* 218, 221 n.1, 94 *S.Ct.* 467, 470 n.1 (1973) (a traffic-violation arrest is not rendered invalid by the fact that it was "a mere pretext" for a narcotics search); *State v. Smith*, 306 *N.J. Super.* 370 (App.Div.1997).

[23] *Whren* at 813-14, 166 *S.Ct.* at 1774.

[24] See *Ornelas* at 813-4, 116 *S.Ct.* at 1662 ("the mosaic which is analyzed for a reasonable-suspicion or probable-cause inquiry is multi-faceted").

j. a popped-out trunk lock, bugs on the rear license plate, broken vent or side windows, peeling inspection stickers, and other indicia suggesting that the vehicle is stolen
k. refusal to cooperate with or respond to reasonable police requests.[25]

2. Information received that:

a. the motorist or other occupant is wanted for a violation of law
b. the motorist is intoxicated
c. prior knowledge that the motorist or other occupant has a criminal history
d. the motorist or other occupant is in possession of contraband/weapons
e. the motorist's license has been revoked
f. the vehicle is unregistered
g. the vehicle is stolen
h. the license of the registered owner of the vehicle is revoked and the driver generally matches the description provided by the Division of Motor Vehicles

3. Time / location of the proposed motor vehicle stop:

a. nighttime stops
b. high-crime area
c. absence of traffic leading to isolation of officer

Recently, the Supreme Court reviewed observations made by police and found a sufficient basis to conclude the defendant had engaged in illegal activity. *State v. Arthur*[26] The Court noted that police officers should consider whether a defendant's actions are more consistent with innocence than guilt; however, simply because a defendant's actions might have some speculative innocent explanation does not mean that they cannot support articulable suspicion if a reasonable person would find the actions are consistent with guilt. In *Arthur,* no transaction was observed by the narcotics detective, however the Court felt that a transaction was readily inferable, especially since the observations were made in an area known for drug trafficking.[27]

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[25] *State v. Seymour*, 289 *N.J. Super.* 80, 87 (App.Div.1996) (driver didn't bring vehicle to a full stop after receiving officer's signal to do so.)

[26] 149 *N.J.* 1 (1997) see also *State v. Citarella*, 154 *N.J.* 272 (1998)

[27] *Id*. at 10-11.

21.10.3 Stops Based on Observed Violations

The most common ground for stopping an automobile and detaining its driver is the police observation of a motor vehicle or traffic violation.[28] Title 39, the Motor Vehicle and Traffic Laws of New Jersey, sets forth a rich variety of regulations governing the licensing, registration and use of motor vehicles in this State. Generally, a law enforcement officer's observation of a Title 39 violation provides a reason to stop the offending motorist. The officer need not, however, demonstrate actual proof of a particular violation in order to validly stop a motor vehicle. Rather, the officer need only demonstrate a reasonable and articulable suspicion that the motorist's conduct violated a Motor Vehicle Code provision.[29] While the courts in this State have not discussed or interpreted *all* the Title 39 provisions, they have had occasion to address a number of them.

For example, in *State v. Williamson*, the Court held, in the context of a lane change without signaling under *N.J.S.* 39:4-126, that the police had the right to stop the offending motorist on the basis of "a reasonable and articulable suspicion that the [motorist's] failure to signal may have affected other traffic," which may include the officer's patrol car,[30] even if it is the only other car on the road.

In *State v. Johnson*,[31] the court did not hesitate to find the stop of defendant's Pontiac lawful where, for about a half a mile, a state trooper paced, at 75 miles per hour, the vehicle which defendant was driving in the left lane of Route 80, and then observed the vehicle abruptly apply its brakes and cut across all lanes of travel into the right lane, as if to exit the highway.

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[28] See *Whren v. United States*, *supra*, 517 *U.S.* at 818, 116 *S.Ct.* at 1776 (The "`foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations' which afford the `quantum of individualized suspicion' necessary to ensure that police discretion is sufficiently constrained.") (quoting *Delaware v. Prouse*, *supra*, 440 *U.S.* at 659, 99 *S.Ct.* at 1399; and United States v. Martinez-Fuerte, 428 *U.S.* at 560, 96 *S.Ct.* at 3084).

[29] *State v. Williamson*, *supra*, 138 *N.J.* at 304; *State v. Alston*, *supra*, 279 *N.J. Super.* at 43.

[30] *Williamson* at 304. See also *State v. Casimono*, 250 *N.J. Super.* 173, 177-78 (App.Div. 1991) (trooper's observation of a motorist suddenly changing lanes several times without signaling provided a reasonable suspicion that the motorist had committed a traffic violation and the resultant justification to conduct a motor vehicle stop).

[31] 274 *N.J. Super.* 137, 153-54 (App. Div.), certif. denied 138 *N.J.* 265 (1994).

In *State v. Pavao*,[32] the court upheld the stop of the defendant's vehicle which the officer observed traveling on a State highway at a low rate of speed, weaving and, on two occasions crossing over the fog line separating the traveled portion of the highway from the shoulder.

In *State v. Murphy*,[33] the court upheld the stop of the defendant's vehicle, which was observed by the police traveling on the New Jersey Turnpike with its license plate "stuck in the weather stripping in a diagonal position" on the rear window, a violation of *N.J.S.* 39:3-33.

In *State v. Cook*,[34] the court held that the police clearly had a reasonable suspicion to stop defendant's Buick due to defendant's irregular stopping movement (characterized as "miscalculated avoidance") as it approached a parked school bus, and his action of applying the brakes frequently and stopping in the middle of the street for no apparent reason.

In *State v. Forgione*,[35] the court made it clear that an officer may stop a person driving a motor vehicle having an out-of-state license plate when the officer observes an equipment violation (in this case, a defective rear brake light). Although *N.J.S.* 39:3-15 exempts vehicles registered in another state (owned by a resident of that state) from the automobile equipment regulations of Title 39, that statute does not prevent an officer from stopping such a vehicle, requiring the driver to produce registration and driving credentials, and providing an appropriate warning when the officer observes such a violation.

In *State v. Seymour*,[36] a trooper erroneously, but in good faith, attempted to stop a vehicle. The driver ignored the officer's signal, increasing his speed and swerving several times. As the officer pursued the vehicle, defendant threw a bag, containing cocaine, from the car. The Appellate

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[32] 239 *N.J. Super.* 206, 209 (App.Div. 1990) see also *State v. Kahlon*,172 *N.J. Super.* 331 (App.Div. 1980).(the stop of vehicle was proper where trooper observed the vehicle traveling on an interstate highway at 30 miles per hour, a speed considerably less than the normal speed for that highway, and where the vehicle was traveling in the center lane, causing other motorists to travel around it.)

[33] 238 *N.J. Super.* 546, 554 (App.Div. 1990) (cataloguing federal and *N.J.* cases upholding stops based on motor vehicle violations).

[34] 170 *N.J. Super.* 499, 501 (Law Div. 1979).see also *State v. Brown*, 160 *N.J. Super.* 227, 229-31 (Law Div. 1978). (The motor vehicle stop deemed lawful based on an officer's observation of what he characterized as defendant's "careless" driving: defendant's vehicle, at 4:00 a.m., swerved between the marked lanes on the N. J. Turnpike and tailgated another vehicle.)

[35] 265 *N.J. Super.* 63 (App.Div. 1993) see also *State v. Oberlton*, 262 *N.J. Super.* 204 (Law Div.1992).

[36] 289 *N.J. Super.* 80 (App.Div.1996).

Division indicated that strong public policy considerations require a driver to bring a vehicle to a full stop immediately after receiving the officer's signal, whether or not the officer's stop of the vehicle is legal or illegal.[37] Since defendant had no right to ignore the officer's signal to stop, defendant's erratic driving in avoiding the stop constituted eluding. The officer had probable cause to seize and arrest the driver and by eluding the police, defendant cannot claim that the cocaine was discarded as the result of illegal activity by the police.[38]

The propriety of stopping a motor vehicle based on the information received from the Division of Motor Vehicles (DMV), pursuant to a routine computerized license plate "lookup," was explored in *State v. Parks*.[39] The officer in *Parks* ran a registration check on defendant's Chevrolet station wagon by entering the license plate number into the patrol car's mobile data terminal. When the lookup came back, the officer learned that the station wagon was registered to David Parks; that Parks' driver's license was suspended; and he obtained a general description of Parks. Thereafter, when a closer look of the driver indicated to the officer that there was a "general match" to the information revealed by the computer, in that the driver was approximately the right age, weight and height, the officer stopped the car.

Upholding the lawfulness of the stop, the court said:

> Here, when the police officer decided that the person he saw operating the station wagon generally matched the description from the records of the Division of Motor Vehicles, he had the requisite articulable, particularized and reasonable suspicion that the driver was David Parks whose driver's license had been revoked. Thus, he acted properly in stopping the vehicle.[40]

Naturally, an officer would not be permitted to stop a motor vehicle on the basis of a computerized lookup when the driver of the vehicle does not match the information related to the registered owner. The mere fact that a vehicle's registered owner has a suspended or revoked license does not, by itself, provide a reasonable suspicion to stop the vehicle. Rather, it is only "when the officer's observation of the driver indicates that the driver could reasonably be the person described in the DMV records, then the dictates of *Delaware v. Prouse* * * * are satisfied."[41]As noted in *State v. Donis*, a motorist's privacy interest is sufficiently protected if the mobile date terminal

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[37] *Id*. at 87.

[38] *Id*. at 88.

[39] 288 *N.J. Super.* 407 (App.Div. 1996).

[40] *Parks* at 411.

[41] *Parks* at 412.

(MDT) uses a two-step process. In the first step, an initial random license plate look-up would display information regarding only registration status of the vehicle, license status of the owner and whether the vehicle had been reported stolen. The registered owner's personal information would not be displayed. Only if the original inquiry disclosed a basis for further police action, would the officer proceed to the second step, which would reveal personal information of the registered owner.[42]

For several additional examples of reasonable suspicion established from observed violations, *see Whren v. United States*[43] (vehicle suddenly turning to its right without signaling, and then speeding off at an "unreasonable speed"); *New York v. Class*[44] (driving above the speed limit in a vehicle with a cracked windshield); *Pennsylvania v. Mimms*[45] (operating a motor vehicle with an expired license plate); *State v. Smith*[46] (speeding); *State v. Carter*[47] (tailgating another car); *State v. Lund*[48] (driver failing to keep right); *State v. Nugent*[49] (hanging license plate and broken taillight lens); and *State v. Griffin*[50] (dangerous left turn on highway).

As the foregoing cases demonstrate, law enforcement officers may stop motor vehicles when they have a reasonable, articulable suspicion that a motor vehicle violation has occurred. Although a number of unpublished decisions have been unwilling to uphold a motor vehicle stop based on the vehicle's driver weaving once or twice within his or her lane of travel, the Appellate Division has recently sustained a motor vehicle stop, in a DWI case where the driver was observed, at 12:20 a.m., traveling thirty-six miles per hour in a forty-five miles per hour business zone, weaving within his lane. *State v. Washington.*[51]

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[42] *State v. Donis*, *supra.* 157 *N.J.* at 55.

[43] 517 *U.S.* at 609-10, 116 *S.Ct.* at 1772.

[44] 475 *U.S.* 106, 106 *S.Ct.* 960 (1986).

[45] 434 *U.S.* 106, 98 *S.Ct.* 330 (1977).

[46] 134 *N.J.* 599 (1994).

[47] 235 *N.J. Super.* 232 (App.Div. 1989).

[48] 119 *N.J.* 35, 41 (1990).

[49] 125 *N.J. Super.* 528 (App.Div. 1973).

[50] 84 *N.J. Super.* 508 (App.Div. 1964).

[51] 296 *N.J. Super.* 569 (App.Div.1997) see also *State v. Martinez* 260 *N.J. Super.* 75 (App.Div.1992).

Absent a motor vehicle violation, police officers have a limited ability to make a "community care taking inquiry" regarding a motor vehicle situation they regard as atypical, as long as the inquiry is not overbearing or harassing in nature. *State v. Drummond*[52] However, it is clear that our courts are cautious in applying the community care taking doctrine to motor vehicle stops. An officer, who is under orders to stop every vehicle due to increased burglaries in the area, cannot justify the stop of a car whose driver waited five seconds after the red light changed, as part of community care taking.[53] A police officer's stop of a defendant, seated in a friend's car, legally parked in a tavern parking lot, went beyond acceptable community care taking and became an investigative detention, which required a reasonable and articulable suspicion. *State v. Costa*[54]

21.10.4 Stops Based on Information From Third Parties

It is well settled that the information obtained from third-party sources may form the basis of a reasonable and articulable suspicion to support a stop of a motor vehicle and the detention of its occupants.[55] Just as hearsay information may form the basis of probable cause for an arrest or search,[56] hearsay may also supply the specific and articulable facts for the reasonable suspicion necessary to support an investigatory stop and detention.[57] The standard of reasonable suspicion is, however, a

> less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. * * * Reasonable suspicion, like probable cause, is dependent

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[52] 305 *N.J. Super.* 84 (App.Div.1997).

[53] 320 *N.J. Super.* 325 (App.Div.1999).

[54] 327 *N.J. Super.* 22 (App.Div.1999) see also *State in the Interest of A.P.*, 315 *N.J. Super.* 166 (Family Part 1998)

[55] *United States v. Hensley*, *supra*, 469 *U.S.* at 230-31, 105 *S.Ct.* at 681; *Whiteley v. Warden*, 401 *U.S.* 560, 568, 91 *S.Ct.* 1031, 1037 (1971).

[56] *Illinois v. Gates*, *supra*, 462 *U.S.* at 230, 103 *S.Ct.* at 2328. See also *State v. Novembrino*, 105 *N.J.* 95, 120-21 (1987) (officers may rely "on hearsay for the purpose of establishing probable cause").

[57] See *Alabama v. White*, *supra*, 496 *U.S.* at 328-29, 110 *S.Ct.* at 2415 (The "totality of the circumstances" approach to determining whether an informant's tip establishes probable cause consists of the same factors that may be used in the "reasonable suspicion" context, "although allowance must be made in applying them for the lesser showing required to meet that standard.").

> upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality— are considered in the "totality of the circumstances— the whole picture," * * * that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.[58]

The information received should be sufficiently descriptive and detailed so as to permit an officer to take independent steps to verify the facts contained therein. Police may, however, act on the information contained in a "wanted flyer" or bulletin without "the specific facts which led their colleagues to seek their assistance."[59] This "minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction."[60] So long as the flyer or bulletin has been issued on the basis of "a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification, * * * to pose questions to the person, or to detain the person briefly while attempting to obtain further information."[61] If, however, the originating agency issued the flyer or bulletin in the absence of a reasonable suspicion, "then a stop in the objective reliance upon it violates the Fourth Amendment."[62]

The source of the information is an important factor in evaluating its sufficiency to establish probable cause. An anonymous call may provide the factual predicate necessary to justify an investigative stop when there is adequate corroboration of the information, by the police. *State v. Zapata*[63] Information provided by an "ordinary" or "concerned" citizen requires less verification

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[58] *White* at 330, 110 *S.Ct.* at 2416.

[59] *Hensley* at 231, 105 *S.Ct.* at 681.

[60] *Id.*

[61] *Id.* at 232, 105 *S.Ct.* at 682.

[62] *Id.*

[63] 297 *N.J. Super.* 160, 172 (App.Div.1997), certif. denied, 156 *N.J.* 405 (1998). In utilizing *Zapata*, be aware that within the opinion, the court specifically disagrees with the Appellate Division opinion in *State v. Zutic*, 294 *N.J. Super.* 367 (App.Div.1996) and adopts the analysis in *State v. Paturzzio*, 292 *N.J. Super.* 542 (App.Div.1995) However, the dissent in *Paturzzio* was cited with approval in the Supreme Court's *Zutic* opinion at 155 *N.J.* 103 (1998).

because there is an assumption, grounded in common sense, that "an ordinary citizen reporting a crime would be motivated by factors consistent with law enforcement goals." *State v. Williams*[64]

The process comprising the "totality of the circumstances" approach takes into account all the facts known to an officer from an informant's tip and from independent, personal observation. The process takes into account the credibility of the hearsay tipster and the appropriate weight to be given the information imparted "in light of its indicia of reliability as established through independent police work."[65]

For example, in *Alabama v. White*,[66] at about 3:00 p.m., an officer received an anonymous telephone tip reporting that Vanessa White would be leaving 235-C Lynwood Terrace Apartments in a brown Plymouth station wagon. The wagon was reported to have a broken right taillight lens. The caller further stated that White would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine. Following up on the tip, several officers went to the Lynwood Terrace Apartments and observed a brown Plymouth station wagon with a broken right taillight lens in the parking lot in front of the 235 building. The officers then saw a woman leave the 235 building, empty handed, and enter the station wagon. They followed the vehicle as it took the most direct route to Dobey's Motel. Shortly before the motel, the officers stopped the vehicle and asked the woman to step out. The driver, identified as Vanessa White, provided the officers with consent to search her vehicle; the search uncovered a quantity of marijuana and cocaine.

Finding the motor vehicle stop entirely lawful, the United States Supreme Court held that when an anonymous caller provides the police with information consisting of "'a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to *future actions of third parties* ordinarily not easily predicted,'" the information contained in the tip demonstrates "inside information," and the anonymous informant's "special familiarity with the suspect's affairs." Thereafter, when significant aspects of the information and predictions in the anonymous tip were verified by independent police investigation, "there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop."[67]

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[64] 317 *N.J. Super.* 149, 157 (App.Div.1998), certif.denied 157 *N.J.* 647 (1999) citing *State v. Lakomy*, 126 *N.J. Super.* 430, 435 (App.Div.1974).

[65] *Alabama v. White*, *supra*, 496 *U.S.* at 330, 110 *S.Ct.* at 2416.

[66] 496 *U.S.* 325, 110 *S.Ct.* 2412 (1990).

[67] *White* at 332, 110 *S.Ct.* at 2417 (quoting *Illinois v. Gates*, *supra*, 462 *U.S.* at 244-45, 103 *S.Ct.* at 2335-36) (emphasis added).

More recently, the New Jersey Supreme Court addressed the sufficiency of an informant's tip to establish probable cause to stop and search a motor vehicle in *State v. Zutic.*[68] The Court noted that establishing an informant's veracity can be done in a number of ways, including past reliability.[69] Independent corroboration of hard-to-know details permits a court to infer an informant has a reliable basis of knowledge. Under the "totality of circumstances" test, several circumstances, though insufficient if considered in isolation, may, in combination, reinforce or augment one another and become sufficient to establish probable cause. [70]

In *Zutic*, a confidential reliable informant[71] told police that a 1973 red Toyota (License #BC-583V) would be traveling up Route 23N to New York City, having recently purchased marijuana. The Supreme Court held that while this information provided a reasonable, articulable suspicion for an investigative stop, this tip, without more, was insufficient to establish probable cause needed to search the vehicle. [72] Thus, information from third parties, even tips from anonymous sources, may provide the necessary justification for a motor vehicle stop. But the information must be sufficiently detailed and corroborated to provide probable cause needed to search a motor vehicle.

In *State v. Battle*,[73] the stop of defendant's vehicle was authorized based on a report from a citizen informant that he had seen several men running from a housing project late at night "tucking guns inside their clothing." The citizen also stated that one of the men, a heavyset man in a brown leather coat, was seen carrying a shotgun which he was wrapping in a green blanket. Thereafter, when the police spotted a vehicle containing a male matching the description of the heavyset man in the brown leather coat, the court held that they had a reasonable suspicion of criminal activity, warranting an investigative detention of the men and their vehicle.

In *State v. Foreshaw*,[74] at approximately 3:30 p.m. in late August, a sergeant from the Camden County Prosecutor's Office received a tip from a confidential informant that a vehicle had

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[68] 294 *N.J. Super.* 367 (App.Div.) rev'd 155 *N.J.* 103 (1998) see also *State v. Smith*, 155 *N.J.* 83 (1998).

[69] *Id.* at 110.

[70] *Id.* at 113.

[71]The Court specifically noted that the officer never indicated why he believed the informant was reliable. *Id.* at 106.

[72] *Id.* at 113.

[73] 165 *N.J. Super.* 521, 530 (App.Div. 1979).

[74] 245 *N.J. Super.* 166 (App.Div.), certif.denied 126 *N.J.* 327 (1991).

departed the Camden area around 10:00 that morning, and was headed to New York City to pick up cocaine. According to the informant, the vehicle, described as a silver or gray Eldorado Cadillac with New Jersey plates and a spare tire mounted on the back, would be returning to Camden at approximately 4:30 p.m. The informant also stated that a Jamaican male by the name of Arthur Brown, along with a second Jamaican male and a Spanish female, would be occupying the car.

Based on this information, the sergeant and a Camden City detective traveled north on the New Jersey turnpike. As they approached Exits 5 and 6, they observed a vehicle traveling southbound matching the description provided by the informant. The sergeant immediately made a U-turn and followed the vehicle. As described by the informant, the car was a silver-gray Eldorado Cadillac with a rear mounted spare tire. The vehicle was occupied by two black males and one Hispanic female. At Exit 4, the vehicle left the Turnpike and headed towards the City of Camden. The officers stopped the vehicle as it neared Camden. The occupants were removed and a search of the vehicle uncovered over 500 grams of cocaine.

In upholding the validity of the stop, the court ruled that the very detailed informant's tip plus the independent police verification of that tip provided not only a reasonable suspicion for the motor vehicle stop, but probable cause for the vehicle's search under the automobile exception to the written warrant requirement.[75]

In *State v. Wanczyk*,[76] the police stopped the car in which defendant was a passenger based on information received from a fire captain that a particularly described male, a "possible suspect or witness," was seen by the captain leaving the scene of a suspicious fire. A second report indicated that the male had entered a tan-colored Chevy with a particular license plate number that was provided. The court said: "There cannot be the slightest doubt * * * that there was an 'articulable and reasonable' suspicion necessary to justify an investigatory stop and detention of the car in which defendant was riding."[77]

Any hearsay report or information that, by its very nature, calls for a law enforcement response, should, as a matter of good practice, be evaluated for sufficiency of detail and indicia of reliability. As the United States Supreme Court has suggested: "'Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before

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[75] *Foreshaw* at 175. See also *State v. Probasco*, 220 *N.J. Super.* 355, 358-59 (App.Div. 1987).

[76] 201 *N.J. Super.* 258 (App.Div. 1985).

[77] *Wanczyk* at 264.

a forcible stop of a suspect would be authorized.'"[78] Thus, in *State v. Spencer*,[79] the court held invalid a motor vehicle stop based on a report that was "exchanged" within the police department, that the driver of a brown or green Chevy Nova, having a particular license plate number (that was provided), "could have a suspended driver's license."[80] According to the court, although the officer did not made an entirely "random" stop, the facts of the case demonstrate absolutely nothing about "the source, nature, details or reliability of the information 'exchanged' within the [police department]. Thus, there was no way to determine whether the police had an articulable and reasonable suspicion to stop the vehicle."[81] In this respect, the court emphasized that "*[t]he reliability of the information is not enhanced simply because it is communicated through police channels*."[82]

21.10.5 Events and Issues Related to Motor Vehicle Stops

21.10.5.1 Prohibition Against Selective Enforcement

At no time may an officer stop a motor vehicle on the basis of the race, color or ethnic appearance of the vehicle's driver or occupants. In this regard, the courts have been crystal clear in the command that "[n]o rational inference may be drawn from the race of one to be detained that he may be engaged in criminal activities."[83] Moreover, it would be wholly improper and constitutionally insupportable to selectively target a particular minority group for motor vehicle law enforcement. Discriminatory law enforcement is wholly illegal and a recognized basis for the exclusion of any evidence derived from the discriminatory or bias-related procedure.[84] As the United

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[78] *Alabama v. White*, *supra*, 496 *U.S.* at 329, 110 *S.Ct.* at 2416 (quoting *Adams v. Williams*, 407 *U.S.* 143, 147, 92 *S.Ct.* 1921, 1924 (1972)).

[79] 221 *N.J. Super.* 265 (App.Div. 1987).

[80] *Spencer* at 267.

[81] *Spencer* at 268.

[82] *Id.* (emphasis added).

[83] *State v. Kuhn*, 213 *N.J. Super.* 275, 281 (App.Div. 1986); See also *State v. Letts*, 254 *N.J. Super.* 390, 399 (Law Div. 1992) (No inference may be drawn "regarding the defendant driver's race as a linchpin leading to the conclusion [that] probable drug activity was 'afoot.'").

[84] *State v. Kennedy*, 247 *N.J. Super.* 21, 30 (App.Div. 1991).

States Supreme Court has said, "the Constitution prohibits selective enforcement of the law based on considerations such as race."[85]

A defendant who makes a demand for discovery, under *State v. Kennedy*, must establish a colorable claim that a police agency has an officially sanctioned or *de facto* policy of selective enforcement against minorities. *State v. Smith*[86] The alleged motives of an individual officer are not enough because "the Fourth Amendment proscribes unreasonable actions, not individual thoughts".[87]

21.10.5.2 Production of Driving Credentials

Armed with a reasonable articulable suspicion that a motor vehicle or traffic violation has occurred, a law enforcement officer has the right not only to stop the motor vehicle but also to require its driver, under *N.J.S.* 39:3-29, to produce his or her driver's license, the vehicle's registration and proof of insurance coverage.[88] Even if the officer has not observed a violation, he may, during a motor vehicle encounter, request production of a driver's license.[89] This requirement applies to motorists who operate their vehicles on the highways of this State, as well as on private property.[90] In addition, the officer is authorized to run a computer check on those driving credentials.[91]

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[85] *Whren v. United States*, *supra*, 517 *U.S.* at 814, 116 *S.Ct.* at 1774. (The constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment.)

[86] 306 *N.J. Super.* 370 (App.Div.1997).

[87] *Id.* at 378 see also *State v. Soto*, 324 *N.J. Super.* 66 (Law Div.1996) (published 1999).

[88] *State v. Wysocki,* 166 *N.J. Super.* 137, 141-42 (App.Div. 1979). See also *State v. Coccomo,* 177 *N.J. Super.* 575 (Law Div. 1980) (Where the initial motor vehicle stop is lawful, "the police may require the driver to produce his driving credentials.").

[89] *State v. Wysocki,* 166 *N.J. Super.* 137, 141-42 (App.Div.1979).

[90] *Wysocki* at 141.

[91] *State v. Lewis,* 288 *N.J. Super.* 160, 164 (App.Div. 1996) (the visual inspection of the plate number and subsequent computer check of the information pertaining to those plates do not intrude on the privacy interests of the motorist) (citing *State v. Myrick,* 282 *N.J. Super.* 285, 293 (Law Div. 1995)). See also *State v. Parks,* 288 *N.J. Super.* 407, 410 (App.Div. 1996); *State v. Donis,* 157 *N.J.* 44, 55-6 (1998); *N.J.S.* 39:3-33.

The inability to produce a valid vehicle registration supports a reasonable suspicion that the vehicle is stolen.[92] A motorist's failure to produce valid driving credentials raises an additional reasonable suspicion that the vehicle may be stolen.[93] "That suspicion authorizes a police officer to conduct a limited warrantless search of areas in the vehicle where such papers might normally be kept by an owner such as the glove compartment."[94] This limited search, sometimes called a search for "evidence of ownership," may only take place when the driver, after being afforded a reasonable opportunity to produce the required documents, is either unwilling or unable to produce them.[95] The search must be strictly limited to the glove box or similar area where a vehicle registration might normally be kept.[96]

The ability to conduct a limited warrantless search of certain areas of a vehicle's interior for a driver's license or other identification must be based on a reasonable suspicion. In *State v. Lark,*[97] an officer stopped a car which was missing its front license plate. The passenger produced a valid registration, insurance card and his own driver's license. The defendant-driver indicated that he had a license, but did not have it with him. A DMV check of the identity given by the driver revealed no valid license in that name. The Appellate Division reversed the trial court and suppressed the drugs recovered by the officer as he searched the vehicle for the driver's license. The Court noted that whether or not the defendant had a valid license did not indicate "criminal activity afoot."[98] Rather than a warrantless entry of the motor vehicle to search for identification, the officer should have detained the driver for further questioning. [99]

The results in *Holmgren* and *Lark* are reconcilable. Once the passenger, in *Lark*, produced a valid registration and insurance card, the officer did not have a reasonable suspicion that the vehicle was stolen. Therefore, the inability of the driver to produce his driver's license amounted only to a motor vehicle violation. On the determination of probable cause to search, the court placed little significance on the fact that the driver provided false or erroneous information of his identity

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[92] *State v. Holmgren*, 282 *N.J.* Super. 212, 215 (App.Div.1995).

[93] *Id.* at 216; *State v. Cook,* 170 *N.J. Super.* 499, 501-02 (Law Div. 1979).

[94] *Holmgren* at 216.

[95] State v. Jones, 195 *N.J. Super.* 119, 123 (App.Div. 1984).

[96] See *State v. Patino*, 83 *N.J.* 1, 12 (1980); *State v. Boykins*, 50 *N.J.* 73 (1967); *State v. Gammons*, 113 *N.J. Super.* 434, 437 (App.Div.), aff'd 59 *N.J.* 451 (1971).

[97] 319 *N.J. Super.* 618 (App.Div.1999) aff'd ___*N.J.*___(2000). The Supreme Court affirmed substantially for the reasons expressed in the Appellate Division opinion.

[98] *Id.* at 626.

[99] *Id.* at 627.

to the officer, noting that *State v. Valentin*[100] prevented the officer from arresting the driver for providing false information regarding his identity. *N.J.S.A.* 2C: 29-3 was amended on December 23, 1999 to specifically change the result in *Valentin.* The ability to arrest for providing false information was expanded to include information given for motor vehicle offenses. The *Lark* decision did address the possibility of a different result if the driver was placed under arrest, which is now permitted under the amended statute.[101]

21.10.5.3 Asking the Driver or a Passenger Out of the Car

s a general matter, once a motor vehicle has been lawfully stopped for a traffic violation, a law enforcement officer may ask the driver to get out of the vehicle.[102] "Rather than conversing while standing exposed to moving traffic, the officer may prefer to ask the driver of the vehicle to step out of the car and off onto the shoulder of the road where the inquiry may be pursued with greater safety to both."[103]

Law enforcement officials may not, however, automatically ask passengers out of a motor vehicle that has been stopped for a traffic violation. "Ordering a passenger to leave the vehicle is distinguishable from ordering the driver to get out of the vehicle because the passenger has not engaged in the culpable conduct that resulted in the vehicle's stop."[104] A passenger may not be ordered out of a vehicle lawfully stopped for a traffic violation unless the officer is able to point to some specific and articulable fact that "*would warrant heightened caution to justify" the order*.[105] An officer is not required to point to specific facts that the occupants are `armed and dangerous.' Rather, the officer need point only to *some fact or facts in the totality of the circumstances that would create in a police officer a heightened awareness of danger* that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to

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[100] 105 *N.J.* 14, 23 (1987).

[101] *State v. Pierce*, 136 *N.J.* 184, 214 (1994) (search of passenger compartment incident to a motor vehicle arrest is only proper if it is the area within the defendant's immediate control) and *Knowles v. Iowa*, 525 *U.S.* 113, 119 *S.Ct.* 484 (1998) (*U.S.* Supreme Court refused to condone a motor vehicle search incident to a traffic citation even though such a search might have been permissible if driver was arrested for the offense.)

[102] *Pennsylvania v. Mimms*, 434 *U.S.* 106, 111, 98 *S.Ct.* 330, 333 (1977); *State v. Smith*, 134 *N.J.* 599, 611 (1994).

[103] *Mimms* at 111, 98 *S.Ct.* at 333. See also *Smith* at 610 ("If the driver is out of the vehicle, he or she is less able to make unobserved movements that might endanger the officer.").

[104] *Smith* at 615.

[105] *Id.* at 618 (emphasis added).

alight from the car.[106] In *State v. Alston*[107], the Appellate Division noted that *Smith* should not be read as precluding the ordering of a passenger to exit the vehicle for other legitimate reasons, in the absence of the requisite "heightened awareness of danger."

Pronounced furtive or threatening movements or gestures by the driver or occupants, poor visibility, additional evasive maneuvers by the driver after the signal to pull over, a "plain view" observation of a weapon or contraband, highly erratic driving prior to the stop, and similar observations represent legitimate considerations in the officer's decision to exercise heightened caution during the course of a motor vehicle stop. Moreover, the arrest of a vehicle's driver is a reason to ask the vehicle's passengers out. In this respect, the court in *Alston* held that, as part of a police officer's community care taking function, passengers may be ordered out of a vehicle operated by a motorist who was either physically or legally unable to drive.[108]

If an officer cannot properly order a passenger from the vehicle, clearly he cannot open the passenger's door without making any preliminary communication with the occupants. *State v. Woodson*[109] When an officer encounters a vehicle which is probably stolen, the driver was agitated but not intoxicated, there is a strong odor of alcohol emanating from the car and an empty beer can is laying immediately below the passenger's window, the officer is entitled to order the passenger to exit the vehicle. *State v. Matthews*[110] When the passenger, who is awake and looking forward, ignores the officer who has knocked on the window, the officer is justified in opening the passenger's door.[111]

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[106] *Id.*

[107] 279 *N.J. Super.* 39, 45 (App.Div.1995).

[108] Id at 45-47; see also *State v. Cargill*, 312 *N.J. Super.* 13, 17 (App.Div.) certif.denied 156 *N.J.* 408 (1998).

[109] 236 *N.J. Super.* 537, 541 (App.Div. 1989). The Appellate Division has recently noted that the *Woodson* court's principle appears inconsistent with the Supreme Court's later holding in Smith. *State v. Matthews*, 330 *N.J. Super.* 1 (App.Div.2000) see also *State v. Conquest*, 243 *N.J. Super.* 528 (App.Div.1990).

[110] 330 *N.J. Super.* 1 (App.Div.2000) decided March 20, 2000.

[111] *Id.* see also *State v. Smith*, 306 *N.J. Super.* 370, 380 (App.Div.1997)(Trooper may properly direct passenger to keep his hands on the dashboard, while driver is being questioned, and failure to obey that direction can justify ordering passenger from car.)

21.10.5.4 Motor Vehicle Stops and Plain View

Once an officer has effected a lawful motor vehicle stop, "a simple observation into the interior" of the vehicle from the officer's vantage point outside the vehicle "is not a 'search' under the United States or New Jersey Constitutions."[112] The courts have consistently held that a motorist does not have a legitimate expectation of privacy in that portion of an automobile which may be viewed from outside the vehicle by either "inquisitive passersby or diligent police officers."[113] Consequently, "the viewing of objects which are in plain view within an automobile does not constitute an unlawful search."[114] If the officer's view of an object provides him or her with probable cause to associate the object with criminal activity, the object may be seized without a warrant.[115]

When an officer is in a lawful vantage point to observe duct-taped parcels between the passenger's legs and his training and experience lead him to the reasonable belief that the parcels contain drugs,[116] the search and seizure of the packages is sustainable under the plain view doctrine. see *State v. Smith.*[117]

The "plain smell" doctrine has also been recognized as akin to the "plain view" exception. In *State v. Judge*[118], a trooper who properly stopped a vehicle for speeding, detected the strong odor of burnt marijuana emanating from the vehicle. Recognizing the officer's expertise, the court found that the smell of burnt marijuana gave rise to a strong suspicion that additional contraband is in the car.[119] The smell permits the officer to conclude that there is criminal activity afoot, in addition to a serious motor vehicle violation.

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[112] *State v. Johnson*, 274 *N.J. Super.* 137, 153 (App.Div. 1994) certif. denied, 138 *N.J.* 265 (1994).

[113] *State v. Foley*, 218 *N.J. Super.* 210, 216 (App.Div. 1987).

[114] *Johnson*, *supra*, 274 *N.J. Super.* at 154.

[115] *Horton v. California*, 496 *U.S.* 128, 142, 110 *S.Ct.* 2301, 2310-11 (1990); *Texas v. Brown*, 460 *U.S.* 730, 737, 103 *S.Ct.* 1535, 1540 (1983); *State v. Bruzzese*, 94 *N.J.* 210, 236-38 (1983); *State v. Moller*, 196 *N.J. Super.* 511, 515 (App.Div. 1984); *State v. Damplias*, 282 *N.J. Super.* 471, 478-79 (App.Div. 1995).

[116] *State v. Demeter*, 124 *N.J.* 374, 381-2 (1991).

[117] 306 *N.J. Super.* 370, 380-81 (App.Div.1997).

[118] 275 *N.J. Super.* 194 (App.Div.1994).

[119] *Id.* at 201.

21.10.5.5 Motor Vehicle Stops and *Miranda*

Police officers are required to administer the *Miranda* warnings prior to interrogating a person *who is in custody*. The *Miranda* safeguards apply regardless of the nature or severity of the offense for which the person is in custody.[120] The courts are in agreement, however, that the roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial" interrogation,[121] and therefore *Miranda* warnings are not required. This is so because "the detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes,"[122] and the atmosphere surrounding the typical traffic stop "is substantially less `police dominated' than that surrounding the kinds of interrogation at issue in *Miranda*."[123] Thus, the typical traffic stop is more analogous to the so-called *Terry* stop than an arrest. For this reason, "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*."[124] Once an individual is transported from the accident scene, the atmosphere of the questioning can change, therefore increasing the need for administering *Miranda* warnings. [125]

The United States Supreme Court has cautioned, however, that the requirements of *Miranda* will come into play if a police officer's treatment of a motorist curtails that motorist's freedom of action to a "degree associated with formal arrest."[126] Consequently, locking a motorist in the backseat of a police car, handcuffing a motorist during the course of the motor vehicle stop,[127]

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[120] *Berkemer v. McCarty*, 468 *U.S.* 420, 434, 104 *S.Ct.* 3138, 3147 (1984); *State v. Leavitt*, 107 *N.J.* 534, 538 (1987); *State v. Stever*, 107 *N.J.* 543, 548 (1987).

[121] *Berkemer* at 439-440, 104 *S.Ct.* at 3150; *Pennsylvania v. Bruder*, 488 *U.S.* 9, 109 *S.Ct.* 205 (1988); *State v. Toro*, 229 *N.J. Super.* 215, 219 (App.Div. 1988).

[122] *Berkemer* at 437, 104 *S.Ct.* at 3148.

[123] *Id.* at 439, 104 *S.Ct.* at 3149.

[124] *Id.* at 440, 104 *S.Ct.* at 3150; *Bruder*, 109 *S.Ct.* at 206. See also *State v. Toro*, *supra*, 229 *N.J. Super.* at 222 n.1 (A police officer's "unarticulated plan [to place a suspect under arrest] has no bearing on the question whether a suspect was "in custody" at a particular time") (quoting *Berkemer* at 442, 104 *S.Ct.* at 3151).

[125] *State v. O'Loughlin*, 270 *N.J. Super.* 472, 485-6 (App.Div.1994).

[126] *Berkemer* at 440, 104 *S.Ct.* at 3150.

[127] Regarding the use of handcuffs, see footnote 2 of the Appellate Division's opinion in *State v. Dickey*, 294 *N.J. Super.* 619, 631 (App.Div.) and further comment by the Supreme Court in its

transporting a motorist from one location to another, and similar actions may be interpreted as custody within the meaning of *Miranda*, and necessitating the administration of the warnings prior to any questioning.

21.10.5.6 Issuing the Motor Vehicle Summons

In any case that rests heavily on the validity of a motor vehicle stop, the absence of a motor vehicle summons raises unnecessary questions regarding the propriety of the initial stop. While the law is clear that the issuance of a motor vehicle summons is not required in every case,[128] the presence of the summons is certainly helpful to the prosecution, for it constitutes documentary evidence of the initial violation and the underlying reason for the motor vehicle stop. Consequently, in any case which begins with a motor vehicle or traffic violation that leads to the discovery of other evidence or the arrest of the driver or a passenger, the officer should make every effort to ensure that the motor vehicle summons for the initial violation is issued.

21.10.5.7 Drawing the Line: When is the Motor Vehicle Stop Over?

An investigative stop – based on a reasonable articulable suspicion – may last no longer than is reasonably necessary to effectuate the purpose of the stop, and in any event, "no longer than is necessary to confirm or dispel the officer's suspicions."[129] The officer is required to diligently pursue his or her investigation, using the least intrusive investigative techniques reasonably available, to verify or dispel suspicions in the shortest period of time possible.[130]

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reversal at 152 *N.J.* 468, 483 (1998).

[128] See *State v. Murphy*, 238 *N.J. Super.* 546, 555 (App.Div. 1990) (the failure of an officer to issue a motor vehicle summons does not affect the lawfulness of the initial stop). Even if a defendant is subsequently found not guilty of the motor vehicle or traffic offense, that finding "'does not impugn the propriety of the initial stop.'" *Murphy* at 553-54 quoting *State v. Nugent*, 125 *N.J. Super.* 528, 534 (App.Div. 1973).

[129] *Florida v. Royer*, *supra*, 460 *U.S.* at 500, 103 *S.Ct.* at 1325; *United States v. Sharpe*, *supra*, 470 *U.S.* at 684, 105 *S.Ct.* at 1574.

[130] *Sharpe* at 686, 687, 105 *S.Ct.* at 1575, 1576; *State v. Davis*, *supra*, 104 *N.J.* at 504. There is no set time limitation; and clearly, officers may "graduate their responses to the demands of any particular situation." *United States v. Place*, 462 *U.S.* 696, 709 n.10, 103 *S.Ct.* 2637, 2646 n.10 (1983). In *Place*, the 90-minute investigative detention was held to be too long because the police knew beforehand that the defendant's plane would be arriving at a certain time and place, and they failed to "diligently pursue their investigation" by having their narcotics detection dog ready and at the airport when defendant's flight arrived. *Id.* at 709, 103 *S.Ct.* at 2645.

Generally, the observation of a motor vehicle violation permits the officer to obtain the motorist's driving credentials, run a computer check on them, and if the motorist's credentials are in order, the officer may then issue the motor vehicle summons for the violation and permit the motorist to go on his or her way. Any further detention of the motorist would require independent or additional facts supporting an independent reasonable suspicion – facts beyond those which prompted the motor vehicle stop and issuance of the summons.

For example, in *State v. Battle*,[131] an officer observed the motorist driving an automobile at approximately 1:30 a.m. without a rear license plate. The officer signaled the motorist to stop. As the officer approached the vehicle, he noticed that it had a temporary registration tag affixed to the rear window. The court held that, although the officer had the right to stop Battle's car because it had no rear license plate, his reasonable suspicion was dispelled when he observed the temporary registration and confirmed that the driver's credentials were in order. Thereafter, any further detention of the motorist and his passenger was unlawful.[132]

The Supreme Court addressed whether an investigative stop of a motorist was sufficiently limited in scope and duration to remain within reasonable bounds in *State v. Dickey*.[133] After a valid motor vehicle stop, the driver was unable to produce a registration. While the vehicle was not reported stolen, the trooper was unable to contact the registered owner, who lived in Ohio. During the course of the investigative stop, a statement was made that led the officer to believe that CDS was in the trunk. Approximately three hours later, the K-9 unit signaled the presence of CDS in the trunk. An hour or so later, defendant signed a consent to search the car, where approximately two kilos of cocaine were recovered. The Supreme Court reversed the Appellate Division, finding that the two-and-one-half to three-and-one-half detention between the initial stop and the establishment of probable cause was unreasonable. As the Court noted: "Simply stated, an investigative stop becomes a *de facto* arrest when the officers' conduct is more intrusive than necessary for an investigative stop."[134]

In contrast to *Dickey,* the delay of a motorist for 25 minutes, following a stop for speeding, where the detaining officer summons another officer to the scene to perform psychophysical tests, was reasonable. *State v. Colapinto*[135] The Appellate Division noted that the detaining officer was in

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[131] 256 *N.J. Super.* 268 (App.Div. 1992).

[132] *Battle* at 274.

[133] 152 *N.J.* 468 (1998).

[134] *Id.* at 478; *United States v. Jones*, 759 F.2d 633, 636 (8th Cir.), *cert. den*. 474 *U.S.* 837 (1985) quoting *United States v. Rose*, 731 F.2d 1337, 1342 (8th Cir.), *cert. den*., 469 *U.S.* 931 (1984).

[135] 309 *N.J. Super.* 132 (App. Div.1998).

the narcotics unit and wanted another officer to evaluate defendant. Further, the officer did not handcuff or question the defendant, who was allowed to wait in his own vehicle. [136]

21.10.6 Roadside Checkpoints / Roadblocks

The law enforcement procedure of systematically stopping motorists at pre-planned checkpoints or roadblocks constitutes a "seizure" within the meaning of the Fourth Amendment to the United States Constitution,[137] and Article I, paragraph 7 of the New Jersey Constitution.[138] Although motor vehicle stops, as a general rule, must be supported by a reasonable articulable suspicion, in exceptional circumstances, certain types of stops may be valid in the absence of such suspicion.[139] Specifically, when the procedure "serves special government needs, beyond the normal need for law enforcement,"[140] a court will balance the privacy and liberty interests of the individual against the promotion of legitimate interests of the government— for example, preventing accidents caused by drunk drivers and unsafe vehicles — to determine whether the requirement of reasonable articulable suspicion may be replaced with an acceptable alternative.[141] This balancing process will also include an assessment of the effectiveness of the procedure in achieving the interest advanced

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[136] *Id.* at 137-38.

[137] *Michigan Dept. of State Police v. Sitz*, 496 *U.S.* 444, 450, 110 *S.Ct.* 2481, 2485 (1990); *United States v. Martinez-Fuerte*, 428 *U.S.* 543, 556, 96 *S.Ct.* 3074, 3082 (1976). See also *Brower v. County of Inyo*, 489 *U.S.* 593, 597, 109 *S.Ct.* 1378, 1381 (1989) (a Fourth Amendment seizure occurs "when there is a governmental termination of freedom of movement through means intentionally applied) (emphasis in original).

[138] *State v. Kadelak*, 258 *N.J. Super.* 599, 602-03 (App.Div. 1992) (*Kadelak I*); *State v. Mazurek*, 237 *N.J. Super.* 231, 235 (App.Div. 1989); *State v. Barcia*, 235 *N.J. Super.* 311, 316 (App.Div. 1989); *State v. Kirk*, 202 *N.J. Super.* 28, 56 (App.Div. 1985).

[139] This section focuses only on the initial stop of each motorist at a roadside checkpoint and the associated preliminary questioning and observation. "Detention of particular motorists for more extensive field sobriety testing [would] require satisfaction of an individualized suspicion standard." *Sitz* at 451, 110 *S.Ct.* 2485; *Martinez-Fuerte* at 567, 96 *S.Ct.* at 3087.

[140] *National Treasury Employees Union v. Von Raab*, 489 *U.S.* 656, 665-66, 109 *S.Ct.* 1384, 1390 (1989); *Rawlings v. Police Dept. of Jersey City*, 133 *N.J.* 182, 189 (1993).

[141] *Kadelak I* at 607, 613; *State v. Kadelak*, 280 *N.J. Super.* 349, 361 (App.Div. 1995) *(Kadelak II)*. See also *State v. Goetaski*, 209 *N.J. Super.* 362 (App.Div. 1986) (In extraordinary circumstances, a motor vehicle stop may be valid in the absence of a reasonable suspicion, for example, to check on the welfare of the motorist).

by the government and the level of intrusion on an individual's privacy and liberty caused by the procedure.[142]

Consequently, the hallmark of a constitutional roadside checkpoint or roadblock is its ability to further a legitimate state interest.[143] To date, the courts have identified at least four such interests:

(1) to combat drunken driving;[144]
(2) to enforce vehicular safety;[145]
(3) detect stolen motor vehicles[146]
(4) to stop smuggling and to check for illegal aliens at the nation's borders;[147] *and*
(5) to apprehend a violent criminal near the scene of a recent, serious crime.[148]

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[142] *Brown v. Texas*, 443 *U.S.* 47, 50-51, 99 *S.Ct.* 2637, 2640 (1979); *Sitz* at 450, 110 *S.Ct.* at 2485; Kadelak II at 362; *State v. Hester*, 245 *N.J. Super.* 75, 79 (App.Div. 1990). See also *State v. Barcia*, *supra*, 235 *N.J. Super.* at 317 ("'the severity of the interference with individual liberty' resulting from a police roadblock is the extent to which it interferes with normal traffic flow") (quoting *Brown* at 50-51, 99 *S.Ct.* at 2640-41).

[143] The requirement that the roadside checkpoint serve a "legitimate state interest" means that the procedure should have a "social utilitarian purpose." See *Kirk* at 43. See also *Kadelak I* at 613 (The burden is on the State to establish that the governmental interests "were of sufficient importance to warrant the intrusion upon the traveling public's federal and state constitutional rights to be free of warrantless seizures.")

[144] *Sitz* at 455, 110 *S.Ct.* at 2488; *Kirk* at 40-41.

[145] *Kadelak II* at 360, 371, 375 (the State "has a vital and compelling interest in maintaining highway safety by ensuring that only qualified drivers operate motor vehicles and that motor vehicles are in a safe condition;" this public safety interest may be enforced through roadside safety checkpoints). See also *State v. Flowers,* 328 *N.J. Super.* 205, 212 (App.Div.2000). (The notion that a stolen automobile checkpoint is a separate and distinct is erroneous. By its very essence, a stolen automobile checkpoint is not different from a motor vehicle credential checkpoint upheld in *Kirk* and *Kadelak.*)

[146] *State v. Flowers*, 328 *N.J. Super.* 205, 212 (App.Div.2000) (By its very essence, a stolen automobile checkpoint is not different from a motor vehicle credentials checkpoint which [has] already been upheld in *Kirk* at 43 and *Kadelak* at 375)

[147] *Martinez-Fuerte* at 554, 558, 96 *S.Ct.*at 3081, 3083

[148] See 4 W. LaFave, *Search and Seizure*, §9.6(a) at 312-13 (3rd ed. 1996) (roadblocks set up near scenes of recent, serious crimes in order to locate and apprehend a fleeing criminal have been

When set up properly and administered in a neutral and systematic manner, roadside checkpoints or roadblocks (hereafter, "roadside checkpoints") which further legitimate State interests need not be supported by a reasonable suspicion of criminal activity or by a reasonable suspicion that a motor vehicle or traffic violation occurred.[149] In this respect, the roadside checkpoint procedure constitutes a unique exception to the constitutional requirement that motor vehicle stops be supported by a reasonable suspicion. As stated by the Court in *Delaware v. Prouse*,[150] the reasonable suspicion requirement for *roving* motor vehicle stops

> does not preclude * * * States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative. We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers.[151]

Accordingly, another critical feature of a constitutional roadside checkpoint procedure is the substantial minimization of police discretion at the site of the checkpoint. In fact, the danger of "unchecked discretion"[152] of law enforcement officials in the field has led to the requirement that checkpoints be undertaken pursuant to reasonably established "neutral criteria,"[153] plus a number of

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upheld). See also Holtz, *New Jersey Contemporary Criminal Procedure*, §3.3 at 519 (1996). Cf. *Kir*k at 36 n.4.

[149] *Barcia* at 316; *Martinez-Fuerte* at 559, 96 *S.Ct.* at 3083.

[150] 440 *U.S.* 648, 99 *S.Ct.* 1391 (1979).

[151] *Prouse* at 663, 99 *S.Ct.* at 1401. See also Kirk at 34 (suggesting that officers stop either every vehicle, or stop vehicles at a uniform rate, *i.e.*, every fifth, tenth or fifteenth vehicle, when conducting a roadblock); *Kadelak* I at 601, 605; *Kadelak II* at 377 (upholding the stopping of every fifth car as well as any vehicle with an observable violation).

[152] *Prouse* at 654-55, 661, 99 *S.Ct.* at 1396, 1400; *Kirk* at 43. See also *Brown v. Texas*, *supra*, 443 *U.S.* at 51, 99 *S.Ct.* at 2640 ("A central concern * * * has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field."); *Sitz* at 454, 110 *S.Ct.* at 2487 (standardless and unchecked police discretion is "`the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent'") (quoting *Prouse* at 661, 99 *S.Ct.* at 1400).

[153] *Kirk* at 39.

other safeguards.[154] In brief, roadside checkpoints "established by a command or supervisory authority," that are "carefully targeted to a designated area at a specified time and place based on data justifying the site selection for reasons of public safety and reasonably efficacious or productive law enforcement goals, [will] likely pass constitutional muster."[155] In addition, the distribution of informational drunk driving literature at the roadblock, which sought to enhance public awareness of drunk driving was applauded in *State v. Reynolds*.[156]

There is no constitutional requirement that a roadside checkpoint be set up in such a way so as to provide an opportunity for motorists to avoid the checkpoint or refuse to participate. As one court observed: "Common sense draws one to the conclusion that permitting motorists to choose whether they desire to cooperate with a checkpoint will reduce its effectiveness, detract from its deterrent effect, and, on occasion, create safety hazards."[157] The interception and stop of a motorist attempting to avoid a checkpoint should not occur, however, unless the motorist was sufficiently close in proximity to the checkpoint site to have adequate notice of the presence and purpose of the checkpoint and of the "posted" requirement that "*ALL VEHICLES MUST PASS THROUGH*." Motorists approaching the checkpoint should be able to "reasonably anticipate that their avoidance of the checkpoint would result in pursuit by a chase vehicle."[158] A motorist, attempting to avoid a roadblock, who commits at least one traffic violation in the presence of police, makes the stop of that motorist reasonable.[159]

21.10.6 Roadside Checkpoints / Roadblocks

For a more comprehensive set of procedures, refer to the next page for *Guidelines Governing Roadside Checkpoints.*[160]

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[154] *Kadelak II* at 377. See also *Sitz* at 452-53, 110 *S.Ct.* at 2486-87.

[155] *Kirk* at 40-41.

[156] 319 *N.J. Super.* 426, 431 (App.Div.1998).

[157] *State v. Hester*, 245 *N.J. Super.* 75, 81 (App.Div.1990).

[158] *Hester* at 82.

[159] *State v. Flowers*, *supra.* 328 *N.J. Super.* at 218.

[160] See *State v. Kirk* at 41, 57 (citing with approval *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 663 P.2d 992, 998-1001 (1983) (Feldman, J., concurring). See also *State v. Moskal*, 246 *N.J. Super.* 12 (App.Div. 1991); *State v. DeCamera*, 237 *N.J. Super.* 380 (App.Div. 1989); *State v. Mazurek*, 237 *N.J. Super.* 231 (App.Div. 1989); *State v. Barcia*, 235 *N.J. Super.* 311 (App.Div. 1989); *State v. Egan*, 213 *N.J. Super.* 133 (App.Div. 1986).

Guidelines Governing
ROADSIDE CHECKPOINTS

1. The roadside checkpoint must further a legitimate State interest.

2. When establishing the checkpoint, there must be participation of command or supervisory authority in the formulation of an "administrative plan" consisting of explicit, neutral and predetermined limitations on the conduct of officers participating in the checkpoint. Discretion shall be minimized by directing checkpoint officers to stop cars at predetermined intervals, *e.g.*, every 5th, 10th, or 15th vehicle, and vehicles having observable violations.

> **a.** The plan must include the selection of the time, place and duration of the checkpoint, which should be based on identifiable statistical data showing the need for the checkpoint at the respective place and time. Consideration should be given to (1) areas known for high incidents of accidents, drunk driving or other traffic violations, (2) traffic volume, and (3) motorist and pedestrian safety.
>
> **b.** The plan must set forth the required number of checkpoint officers that will be needed to ensure that delays are held to a minimum. If an executive-level officer did not participate in the plan's formulation, it should not be implemented until that officer has reviewed and approved it.
>
> **c.** Each officer participating in the checkpoint must be provided with a copy of, or instructed in the contents of, the required procedures set forth in the plan.
>
> **d.** The County Prosecutor must be provided with a copy of the administrative plan at least 72 hours prior to the implementation of the roadside checkpoint.

3. To avoid frightening the traveling public, adequate on-the-scene warnings must be given (for example, a large, obvious sign indicating that the motorist is about to be stopped, the nature of the checkpoint, and that all motorists must pass through; flashing lights; marked police vehicles; and other reflectorized equipment). In addition, advance general publicity of the checkpoint may be provided to deter drunk drivers and other violators from getting in their cars in the first place.

4. The checkpoint must be sufficiently staffed by uniformed officers to ensure safety and prevent undue inconvenience to motorists and unreasonable interference with normal traffic flow. A predetermined, safe and convenient "pull over" or parking area shall be established and used for vehicles or motorists having violations.

5. Officers participating in the checkpoint should be provided with officially specified, neutral and courteous procedures to follow when stopping motorists.

6. Carefully planned and predetermined procedures must be in place for operations that will involve the moving of a checkpoint from one location to another.

7. Upon completion of the checkpoint operation, the participating officers should submit, through the appropriate chain of command, full reports in writing of the conduct and results of the checkpoint to the administrative officer(s) who initiated or planned the operation.

COUNTY OF _______________________________

STATE OF NEW JERSEY

MUNICIPALITY OF _________________________

TO: ____

FROM: ____

DATE: ____

SUBJECT: ***JUSTIFICATION FOR ROADSIDE CHECKPOINT***

This memorandum is submitted for the purpose of justifying the need for a roadside checkpoint to be conducted at the following location: ______________________on the following date: _________________between the hours of ____________ and ____________.

The checkpoint is aimed at detecting and deterring _____________________________ ____.

I am a ____________________________(rank) assigned to the __________________ ______________(office/bureau) of the _______________________________ Department. I have been a law enforcement officer for approximately _________ years. During my law enforcement career, I have received training in the detection and investigation of violations of the motor vehicle, traffic and criminal laws of this State.

I have reviewed the records of our department and the municipality of ________________________________ for the period of ____________________ to _____________________. Those records reveal the following number of incidents which occurred in the area of ____:

1. DWI arrests (alcohol related) ________
2. DWI arrests (drug related) ________
3. Other alcohol-related arrests or incidents ________
4. Narcotics violations / arrests ________
5. Total number of traffic accidents ________
    a. Accidents involving alcohol ________
    b. Accidents involving drugs ________
6. Equipment violations ________
7. Fatal accidents ________

In addition, other factors justifying the proposed roadside checkpoint operation at the place and time indicated are as follows:

____

____

____

______________________________ Roadside checkpoint operations have been conducted routinely in the County and in recent years have been highly publicized, thus warning the traveling public of their existence. These operations have been highly successful in detecting and deterring persons operating under the influence of alcohol or drugs or with dangerous equipment violations.

I therefore believe that the roadside checkpoint detailed above will be highly useful in detecting and deterring the violations specified.

Respectfully submitted,

____

Signature of requesting officer

____

Rank

APPROVED / DISAPPROVED

DATE OF COUNTY PROSECUTOR NOTIFICATION:

____

____

Chief / Sheriff / Director
(Circle one)