

Community Caretaking Function (Seizure of Vehicle):

Goetaski, 209NJSup362 – Police may stop car where there is reason to believe something is wrong w/ car/driver (comm caretaking function); Chapman, 332NJSup452.
Martinez, 260NJSup75 – Police can stop car moving “at a snail’s pace” at 2:00am.
Griffin, 84NJSup508 – Police may stop car that did not commit MV viol but made hazardous turn. See Washington, 296NJSup569; Dickey, 294NJSup619.
Williamson, 138NJ302 – State need not prove that MV viol occurred as matter of law to justify stop; only need “reas & art susp” that statute was viol (Barrow, 408NJSuper509)
Cryan, 320NJSup325 – CCF stop invalid where car waited 5 secs aft light turned green (Brackin, unrep’d, – 10 sec insuff);
Egan 325NJSup402 – moving van across road does not justify CCF stop
Diloreto, 180NJ264 – Ct. upholds search/seizure of D who was erroneously listed in NCIC as missing/endangered, frisked and put in patrol car while waiting NCIC confirmation
See also Drummond, 305NJSup84 (upholds stop of dark car in closed car wash); Costa, 327NJSup22 (rejects stop of men sitting in car in open bar parking lot); Bogan, 200NJ61

Seizure of Vehicle - M.V. Infraction:

Locurto, 157NJ463; Williamson, 138NJ302 - State need only prove art susp of viol for valid stop; state need not prove it can convict driver of viol for stop to be valid.
Cohen, 347NJ375 – acquittal for underlying viol does not invalidate stop.
DE v. Prouse, 440US648 – Ofc may stop car/detain driver where there is reas/art susp that driver unlicensed, auto not reg’d, or car/driver subject to seizure for viol of law.
Sutherland, 231NJ429 – brake/tail light statute req’s 1 working taillight on each side of car; if car has 2 on each side (1 out, 1 working)=no violation. No need to consider Heien, 574US54 3rd brake light? – NJSA 39:3-61a was amended in 2014 to cross-reference 39:3-66.3; so since 2014, officers can conduct a mv stop & ticket for a non-functioning 3rd brake light.
D.K., 360NJSup49 – 39:3-33; Ofc. can stop car bearing tinted plastic cover rendering license plate unreadable.
Carter, Roman-Rosado, 247NJ488 - 39:3-33 LP frame stop only valid if LP frame renders any printing on plate (incl “Garden State”) illegible/unIDable; if only partially covered but legible, frame is legal
Murphy, 238NJSup549 – Tpr may stop car to investigate viol of NJ’s LP display laws where LP attached diagonally to rear window (then seize CDS in plain view).
Oberlton, 262NJSup204 – Tinted windows on NJ car justify stop (as modified by Bejarano “inhibited the ability to clearly see inside...”)
Cohen, 347NJSup375 – Ofc. can stop car with tinted windows and out-of-state plates (overruling R.M., 343NJSup153 and Harrison, 236NJSup69) (as modified by Bejarano “inhibited . . .”)(Smith, 251NJ244 – Window tint stop valid where windshield or front side windows are tinted to a level that “police cannot clearly see people or articles within the car”; cannot stop for rear tint. (Haskins)
Bejarano, 2022WL4390892- Stop for 39:3-74 req’s state to prove reas susp of tint on front side windows/windshield that “inhibited the ofc’s ability to clearly see the vehicle’s occupants or articles inside”
Parks, 288NJSup407 – MV stop proper if computer shows reg’d owner’s DL suspended & driver matches DMV info. See Lewis, 288NJSup160; Myrick, 282NJSup285.
Williams, 254NJ8 - MDT inquiry shows reg’d owner’s DL suspended, but ofc sees that driver is not the RO when ofc stops car = ofc must terminate the stop w/o asking for DL, etc.
Moss, 277NJSup545 – Ofc may stop car upon witnessing a MV viol (i.e., failing to signal left-hand turn which affects other traffic).
Barrow, 408NJSup509 – Pretexual MV stop ok - Ofc’s subj motive irrelv; objective facts determine validity of stop; only need art susp, not PbaRD (boxing gloves/mirror is enough to stop)
Thompson, 2017WL2705442 (unpub’d) – 39:3-74 req’s ofc to have art susp that object hanging from mirror “unduly interferes” w/ vision; 1 xmas tree air freshener = not enough to stop
Donis, 157NJ44 – Random computer LP checks are permissible; MDT lookup showing RO’s DL suspended is sufficient to stop car (even without ofc matching suspended RO’s description to driver)
Williamson, 138NJ302 – Police may not stop MV for failure to signal unless there is a “reas/art susp” that failure is “to some degree likely to” affect traffic; need not prove traffic actually affected
Regis, 208NJ439 - 39:4-88b failure to maintain lane does not require proof of danger to another vehicle; crossing the fog line is sufficient to violate the statute
Boone, 479NJSup193 - “crossing the line” “more than once,” without more, is not sufficient to establish a viol of 39:4-88b failure to maintain lane; pretext stops are legal.
Stampono, 341NJSup247 – Police may approach car and question D sitting in car w/o reas susp, but D can refuse to answer questions and leave w/o showing ID.
Alessi, 240NJ501 - Police cannot stop car simply b/c they want to interview driver about ongoing investigation (where driver is not a suspect); options? (1) field inquiry; (2) serve a GJ subpoena
Amelio, 197NJ207 – Police can stop car based on 17y/o daughter’s call to police describing car and stating that her father was DWI (daughter ID’d herself)
Golotta, 178NJ205 – Police can stop car based on anonymous 911 call giving LP# of “out of control” driver w/o corroboration; anonymous 911 call = to ID’d citizen informant
Scriven, 226NJ2- - Police cannot stop car for failing to dim highbeams absent an oncoming car driven by oncoming driver; a pedestrian or perpendicular car is insufficient to stop

Questioning Occupants:

Chapman, 332NJSup452 – Ordinarily, once driver produces valid DL and proof he is entitled to operate car, he must be allowed to go w/o delay/add ques. Ofc. can only question driver about nature and purpose of trip if those questions are related to stop. If answers false/inconsistent, ofc may ask add more intrusive questions.
Hickman, 335N.JSup623 – Roadside questioning car’s occupants following traffic stop is not “custodial interrogation” requiring M warnings even if questions are accusatory.
After valid stop, police may question occupants on a subject unrelated to the purpose of the stop (but not for ID), as long as questioning does not extend duration of the stop.
Toro, 229NJSup215 – Roadside question “what’s in the package” (which police suspected contained drugs), after ordering D from car & pat frisk, did not require M warnings.
Sloane, 193NJ423 - During mv stop, passenger is “seized” and police do not need reas susp to run NCIC check as long as they don’t unreas prolong stop & there is a basis to focus on the passenger.
Baum, 199NJ407 - conflicting stories & neither occupant can ID owner = art susp to detain car; ofc can ask routine questions – “where coming from/going to?” after MV stop; if stop gives rise to suspicions unrelated to orig stop, ofc. may broaden the inquiry; M warnings not req’d before asking about poss. drugs in car (but see Hampton, 333NJSup19 (invalid search from traffic stop))
Boston 469NJSup223 - Passenger in traffic stop is seized, and police cannot request/demand ID from pass unless police have articulable susp for pass; police can ask pass questions, pass can refuse to answer, but police cannot request ID from pass w/o art susp; when police arrest driver, they can ask pass if pass has a NJDL = if “yes,” then ok to ask for name/ ID; if “no,” then can’t ask for name/ID.
Carrillo, 469NJSup318 - Traffic stop’s tolerable duration includes time to address the traffic violation “and attend to related safety concerns”; 2nd pat frisk may be okay after 1st pat down reveals nothing.

Ordering occupants out of the car & opening the car door:

PA v. Mims, 434US106 – *Per se* rule allows police to order driver out of car lawfully stopped for traffic offense without any particular suspicion.
Mich v. Long, 463US1032 – *Per se* rule allowing police to order driver out of lawfully stopped car applies to all passengers/occupants as well (but see Smith, below).
Smith, 134NJ599 – *Per se* “driver out” rule does not apply to passengers; can only order pass out w/ spec & art facts to warrant heightened caution (less than Terry reas susp). (Reaffirmed in Bacome)
Bacome, 228NJ94 – Driver’s furtive movement justified police in ordering passenger out of car; objective facts control, ofc’s subjective intent irrelevant.
Legette, 274NJSup278 – Ofc can order passenger out of car during MV stop while issuing passenger summons for failure to wear seat belt.
Alston, 279NJSup39 – Under comm. care. func., ofc. can order passengers out to see if they have valid DL’s & are phys. capable of driving car after arresting driv for d/w/susp.
Matthews, 330NJSup1 - Ofc can order passenger out of car/open door where passenger engaged in culpable conduct (i.e., no seat belt, ignores window knock) see also Mai.
Conquest, 243NJSup528 - Ofc can order passenger out of car/open door where passenger engaged in culpable conduct (i.e., driver nervous, passenger bent down).
Woodson, 236NJSup537 – Ofc cannot open door, w/o warning/conversation, on speeding stop w/ no other unusual conduct (factors: (1) permission; (2) warning; (3) did ofc first speak w/ driver).
Mai, 202NJ12 – Ofc. can open door while ordering passenger out of car; gun thereafter seen in plain view on car floor b/c of open door can be seized.
Eutsey (unpublished, 2008WL926653) – Ofcs have a right/duty to control passengers during traffic stop (cites Bonner, 363F3d213 – passenger’s flight from mv stop = reas susp)
Sloane, 193NJ423 – Ofc conducting mv stop can order occupants to get back into car

Inventory Search:

Mangold, 82NJ575 - Police must give occupants opportunity to make alternative arrangements for safeguarding vehicle before they can conduct inventory search.
Hummel, 232NJ196 - inventory search req’s; (1) valid impoundment; (2) legal procedure (valid scope, procedure & no less intrusive alternatives); search of purse invalid where police interview D w/o seizing purse, frisking D; permit D to rummage through purse several times & offer to let D examine purse herself (instead of police); also inventory for “\$500” exceeded \$ & included receipts.

Automobile Exception (probable cause / mobility based):

Witt, 223NJ409 - auto exception requires prob. cause & "unforeseen & spontaneous events unfolding"; overrules Pena-Flores/exig.circum. no longer req'd. But, must search on scene/can't tow. Should (must?) search car before occupants are arrested & secured elsewhere. If ofc. has probable cause to search a car and is looking for that car, ofc. must get a s/w if it is practicable to do so
Smart, 253NJ156 - When police have pc based on a "sequence of interconnected events" of more than 2 months, culminating in a K9 sniff, pc is not "unforeseen and spontaneous" & s/w is req'd.
Pittman (unpub'd 2023WL6930025) - Ofc looks for CDS deals, sees D, has CI info on D, sees D engage in suspicious behavior, calls k9 (+hit) = s/w req'd; auto exception not appli b/c not "unfor & spon"
Rodriguez, 459NJSup13 – roadside Witt prob cause search of car may still be conducted even if police are going to tow the car. (Affirmed in Courtney – as long as car is roadside, Witt search is valid)
US v. Ross, 456US798 – Police may search any closed containers/compartments inside auto where there is prob cause to believe that auto contains contraband or evidence.
CA v. Acevedo, 500US565 – Eliminates Chadwick/Sanders rule; now, police may search w/o a warrant package found in auto where police only have prob cause to search package (but lack pc to search entire car). No NJ case on point yet, so this may not be good law in NJ - NJ law on containers is unclear. See Lugo, 249NJSup565.
Murray, 151NJSup300 – Scope? Police cannot "interfere with the structural integrity of the vehicle" (e.g., removing seat, wheel panels, air vents); see also Houston 2017WL6398780
Patino, 83NJ1 – Small amount of marj in glove compartment alone does not justify warrantless search of trunk of car; ~~other circumstances may~~. See Letman, 235NJSup337.
Wilson, 178NJ7 – Poss of CDS on D (outside car), w/o more, does not = prob cause to search his last known place of occupancy (inside car D just exited).
Demeter, 124NJ374 – Film canister containing marj alone does not create prob cause to search it or car.
Bell, 195NJSup49 – Police not req'd to get anticipatory warrant where they have prob cause to believe car may contain narcotics in future (*but see Williams*, 168NJSup352).
Irelan, 375NJSup100 – DWI arrest gives police prob. cause to search interior compartment of car for evidence of DWI, i.e., open containers; ct declines to decide whether search was also valid under Belton as a search incident to arrest of driver, who was handcuffed in police car. (Prob cause to search for intoxicants reaffirmed in Witt)
Gamble, 218NJ412 - Protective "sweep"/"frisk" of car for weapons valid in very ltd circums when ofc. has art. susp. that D is dangerous & may gain immediate access to weapons (Lund, 119NJ35)
Dion Robinson, 228NJ529 – Protective "sweep"/"frisk" of car invalid after 4 D's removed, handcuffed & secured in patrol cars by 5 ofcs b/c ofcs had D's secured & no evid D's could immed get gun.

Automobile Search - Incident to Arrest of Occupant:

Eckel, 185NJ523, Dunlap, 185NJ543 – Reject Belton; search of car incident to arrest of driver invalid where driver "arrested, removed and secured elsewhere" and can't grab weapon / destroy evid. If D arrested but not removed/secured, cts will decide case by case if D could compromise safety or destroy evid.
Pierce, 136NJ184 – Arrest for routine MV offense will not support search of car incident to arrest; Ofc. has power to arrest for driving while suspended, but despite 39:5-25, police should not assume that they possess the power to arrest for all MV offenses (Lark, 163NJ294). (See also Sheppard, 196NJSup 448 – Ofc can arrest for driving while revoked)

Credentials Search - Note that this area of the law is unclear – Best summary: if D cannot produce reg or insurance after being given a chance to do so, police may search glove compartment & possibly visor or center console; if D cannot produce DL or ID, police may detain driver, and ultimately arrest D, but may not search the car for a DL or ID.

Johnson, 476NJSup1 - Police who detain D outside car & won't let D back in cannot enter car to search for reg; police must ask "paper or electronic"; reg exception req's D get meaningful opp to get reg
Terry, 232NJ218 - reaffirms that if D is unable or unwilling to produce reg or proof of ownership, police may search glove compartment; but, if D explains reg is lost or forgotten, and police can determine that D is a lawful possessor through other means (e.g., MDT), search of glove compartment is not justified. (Also glove box search ok if D unconscious; see Sidorek 2014WL11264780).
Hamlett, 449NJSup159 – upholds search of center console for NJDL, reg, ins. card and rental agreement where D is willing but unable to produce docs.
Keaton, 222NJ438 – Police cannot enter wrecked car to get D's cred's w/o consent or giving conscious but injured D opp to retrieve them himself.
Jones, 195NJSup119 – Police cannot enter overturned vehicle to search for reg & ins without first giving D a chance to produce it; ofc can only enter if D is unable/unwilling to produce reg.
Pena-Flores, 198NJ6- If driver can't produce registration, ofc. may search glove compartment & center console for registration (Lewis, 411NJSup483)
Lark, 163NJ294 – Driver produced reg/ins card but not DL and gave a false name = ofc may arrest driver but may not search car for DL; absent pc, police can't search car for ID (aff'd in Terry)
Carly, 332NJSup200 (AD op. aff'd by 170NJ632) – Driver's inability to produce DL, reg, or rental agreement does not justify search of car for credentials; if driver has no DL & lies about his ID, ofc. may detain driver until his ID is estab'd, or arrest driver for driving w/o a DL, but ofc. may not search the car for ID; see also Pierce, 136NJ@213.
Perstein, 206NJSup246 - D's refusal to provide ofc with DL/reg/ins so that ofc could issue citation constituted obstructing in viol of 2C:29-1; 39:5-25 allowed arrest of driver who refused to provide DL (Older credentials possibly valid as to reg & insurance, but not valid as to DL or ID: Boykins, 50NJ73 – When police stop car for MV viol and driver refuses to produce DL, reg & ins, police may search car for evid of ownership; Gammons, 113NJSup434 & Patino, 83NJ1 – Boykins search must be limited to glove compartment/ other area where cred's are normally found; Jones, 195NJSup119 – Driver must be given opp to get cred's himself; Colvin, 123NJ428; Holmgren, 282NJSup212 – Boykins search does not extend to driver's wallet/purse/ bag).

Plain View:

Coolidge v. NH, 403US443 –Plain view reqs: (1) observed from a lawful vantage point; (2) inadvertent; and (3) immed apparent that item is contraband/evidence of a crime; see Johnson, 171NJ192.
Gonzales, 227NJ77 – lawful "plain view" seizure requires: (1) ofc. legally in position to view; (2) ofc. has prob cause to associate item w/ crime (eliminates 3rd prong (inadvertent)).
Washington, 475NJSup292 - affirms Gonzalez 2 prong plain view test; rejects auto exception's "spontaneous" & "unforeseeable" req for plain view; police could seize & tow car, then apply for s/w.
Texas v. Brown, 460US730 – (Balloon); Removes "immed apparent" req; PC = reas man believes item may be contraband/stolen/evid; no req of more likely true than false.
Bruzzese, 94NJ210 – Follows Texas v. Brown in dropping "immediately apparent" req; also, pc determined by obj facts, not ofc's subjective motivations.
Demeter, 124NJ374 – Police do not have prob cause to believe that there is contraband/marj in film canister viewed in front console of stopped van.
Moller, 196NJSup511 – Use of flashlight to aid plain view permitted; Fuhs, 265NJSup188 - use of binoculars permissible.
Sansotta, 338NJSup486 – Ofc only had hunch, not prob cause, to believe water bottle contained GHB. See Katz, 389US347; George, 257NJSup493; Murphy, 238 NJSup546.
Mann, 203NJ328 – Ofc who sees CDS in plain view on rear seat of car may open car door & seize CDS. (See also Torres, 2012WL652644)
Reininger, 430NJSup517 - Ofc. who sees gun cases in plain view from outside car has prob. cause & may seize them
Harris, 457NJSup34 – Ofc executing CDW by reviewing disc provided by cell phone co. cannot open jpeg files where CDW did not ask for photos; not a valid "plain view" seizure
O'Donnell, 408NJSup177 – Where initial entry into home is lawful, delay in seizing plain view evid does not req suppression as long as it is "single, continuous police action"

Plain Smell & K9

After 2021 marj legalization, prior plain smell marj cases are no longer good law (Myers, Guerra, Patino, Letman, Judge, Kahlon, Astalos, Vanderveer, Nishina, Holland, Birkenmeier, McMillian)
Jones, 326NJSup234 – Smell of alcohol on driver's breath, nervousness & admission to drinking one beer does not justify search of car for open containers of alcohol.
Schubert, 235NJSup212 – Smell of alcohol on driver's breath, open beer can on console, and smell of gas justified search of trunk for gas related to arson.
Dunbar, 229NJ521 - Ct adopts fed std; K9 sniff of lawfully stopped car does not require art susp as long as it does not prolong the stop; if the stop is prolonged, ofc. needs reas suspicion.
Nelson, 237NJ540 – Police can extend duration of traffic stop to call K9 if they have articulable suspicion; 37 minute detention to wait for K9 was permissible here.
Smart, 473NJSup87 – search not valid b/c not unforeseen/spontaneous where police investigate car for 1 1/2 hrs (reas susp), stop car for 23 min, K9 alerts (pc arises), then police search without a s/w
Mandel, 455NJSuper109 – Ofc acted reasonably in sticking his head inside D's open car window to hear D over traffic, resulting in smell of marj. (whether sticking head in open window constitutes a search is an open question under NJ law).

Plain Feel:

MN v. Dickerson, 508US366 - Police can seize objects felt during pat-down if the object's criminal nature is "immediately apparent"; no add'l manipulation permitted.
Jackson, 276NJSup626 – Follows Dickerson; no add'l manipulation permitted; see also Pritchett (unpub'd, 2017WL1282776)
Privott, 203NJ16 - Pat frisk must be least intrusive means necessary; lifting D's T-shirt to see his stomach, without first feeling unID'able bulge, is unconstitutional
Clarke, 198NJSup219 – During pat frisk, police cannot reach into clothing to seize an item that police know is not a weapon (socks in a burglary Terry stop & frisk)
Roach, 172NJ19 – In very ltd circumstances, during pat frisk, police could reach into clothing to remove unusual item that police could not tell whether or not it was a weapon (bag of drugs in groin area)
Cargill, 312NJSup13 – Upholds seizure of cocaine vial immediately recognized by ofc during pat-down.
Toth, 321NJSup 609 – Totality of the circumstances test applies to whether ofc could tell from pat-down that object was contraband (need not rely on feel alone).
Evans, 235NJ125 – Plain feel discovery of likely crack cocaine in D's crotch is a "recognized exception to warrant req" that justifies "strip search" to retrieve the cocaine
Brown, 456NJSup352 – D's efforts to resist pat-down for weapons justify a warrantless "strip search" at PD
Carrillo, 469NJSup318 - Traffic stop's tolerable duration includes time to address the traffic violation "and attend to related safety concerns"; 2nd pat frisk may be okay after 1st pat down reveals nothing.

Search Incident to Arrest (of person – non motor vehicle):

Sims, 75NJ337 – For an incident to arrest search to be valid, police must have had pc to arrest without regard to what the search ultimately disclosed; see Smith, 155NJ83.
O'Neal, 190NJ601 – As long as pc exists to arrest prior to the search, it doesn't matter if the search occurs before or after the arrest.
Dangerfield, 171NJ446 - Police may arrest for DP's & PDP's occurring in their presence, and can search incident to arrest for weapons/evid of offense (see J.M., 339NJSup244)
Daniels, 393NJSup476 – when D is validly arrested (i.e., a non-pretext arrest), there are no limitations on the scope of the search of his person (even for PDP's).
Hurtado, 219NJSup12, 113NJ1 – Police can detain to verify ID to issue summons, but not make custodial arrest, for violation of a municipal anti-littering ordinance; search incident to arrest invalid.
RM, 408NJSuper304 – Police can detain for municipal ordinance violations to ascertain D's ID and issue summons (for juveniles, note that JM, 339NJSuper244 & RM, 408NJSuper304, differ)
Vonderfecht, 284NJSup555 – Police may arrest PDP defiant trespass; no distinction b/t DP & PDP; full search upheld (frisk for weap & search for evid of the spec. offense).
Ciasulli, 2005WL3610167 (AD) – Search of D, incl emptying pockets, after arrest for outstanding municipal court warrant, was valid.
Chimel v. CA, 395US752 – Once ofc makes arrest based on prob cause, he may search the person and area w/in his immediate control.
Oyenusi, 387NJSup146 – upholds search of bags D was carrying after D handcuffed & could no longer get bags; search incident to arrest requires "substantial contemporaneity".
Vanderee, 476NJSup214 – upholds search of D's clothes at hospital 90 min after arrest; delayed search incident to arrest valid if both delay and scope are reasonable.
Paturzzio, 292NJSup542 – upholds search of D's purse at police station as incident to arrest or as inventory.
Bruzzese, 94NJ210 – once D placed under arrest, police can follow D anywhere in his house that D chooses to go.
Bradley, 291NJSup501 – Search of D's bag incident to arrest invalid where D is arrested, handcuffed, moved elsewhere and bag is searched 4-10 minutes later.
Hwang, 2015WL7292169 – Search of backpack incident to arrest invalid where police arrest D on street, transport him and backpack 5 minutes away to BCPO, then search pack there.
Rose, 357NJSup100 – Search of bathroom incident to arrest invalid where 3 ofcs arrest D in motel bathroom, handcuff him, move him outside bathroom, then return to search bathroom.
Lentz, 463NJSup54 - GSR test of D's fingers 3 hours after arrest was a permissible search incident to arrest; factors: (1) delay, and (2) scope of search must be reasonable.
Torres, 253NJ485 - Police arrested/interviewed D for murder, D invoked; police seized D's clothing after D picked at his fingers/clothes. Delayed warrantless search was valid search incident to arrest.

Consent:

Note 2021 marj law prohibits requesting consent to search from D's < 21 y/o based on marj/alcohol (police may still request consent to search from persons > 18 for crimes unrelated to marj/alcohol).
Carly, 170NJ632 – Art susp is a necessary pre-req to requesting consent to search vehicle after routine traffic stop under NJ Constitution.; see Yanovsky, 340 NJSup1 (Carly applies to request to search bag in car); Leslie, 338NJSup269 – Scope of consent to search car.
Elders, 192NJ224 – Art susp is a necessary pre-req to request consent to search disabled vehicle; (App. Div. 386NJSup208 – saying K9 will be called doesn't invalid. consent);
Baum, 199NJ407 – mentioning K9 not unduly coercive
Domicz, 188NJ285 – (1) Police do not need art. susp. to request consent to search a house; (2) electricity records may be obtained by GJ subp; (3) unstop'd poly not admit to mot. to supp.; (4) no trespass of protected curtilage where police walk to back door and reas. believe back door is used by visitors.
Lee, 245NJSup441 – Driver's consent to search car does not include containers in car of which driver denies ownership, but party who denies ownership of item has no privacy interest in item to later challenge search (see Abreu, 257NJSup549 & Chapman, 332NJSup452 re no privacy int. in objects for which ownership is disclaimed).
Chappee, 211NJSup321 – Miranda warnings not required prior to req'g consent to search vehicle / asking about marj. in car; 4th Am. diff than 5th Am.; Zolp, 659F.Supp692
Todd, 355NJSup132 – D must know of his right to refuse consent for consent to be voluntary & knowing;
Williams, 461NJSup80 - Police do not have to inform homeowner that homeowner has the right to refuse to permit police to enter the house (must still advise of right to refuse consent to search).
Johnson, 365NJSup27 – Scope of consent may be limited.
Santana, 215NJSup63 – D has right to be present during consent search to revoke his consent, but may implicitly waive this right; "complete" search auth. removal of door panel
Hampton, 333NJSup19 – Consent search invalid b/c it occurred 1 hour later and 10 miles away from time/location where consent to search was obtained after traffic stop
Anglada, 144NJSup358 – "deceptive guest" rule – police may gain entry to premises w/o disclosing their true ID and use info observed while inside to obtain SW; police have no duty to advise occupants that they are police ofcs.
Ellis, 246NJSup72 – police can search bags when they ask 2 D's for permission; D1- "they're not ours, you can search them" & D2 is silent. Failure to object to search=consent.
M.A., 402NJSup353 - D has no expectation of privacy for personal info stored on his work computer; D's employer can consent to search; see also XYC Corp, 382NJSup122.

Third party consent: 3rd party may consent to search where 3rd party has "common authority" at least equal to D over item/area, or "appearance of control" at time of search (Miller, 159NJSup552, Younger 305NJSup250, Farmer, 366NJSup307, Douglas 204NJSup265). Test is one of "objective reasonableness" based on TotC (Coles, 218 NJ322)
GA v. Randolph, 547US103 – 3P's consent invalid where D also present & specifically refuses consent (H&W present; W says yes, H says no; consent search invalid)
Crumb, 307NJSup204 – Under certain circumstances, parents can consent to the search of their child's property, even where child is an adult or pays rent (very fact specific).
Marcellus, 472 NJSup269 – D's aunt & mother lacked "common authority" to give consent to search D's bag; police had no basis to believe their consent was reas.
Fernandez 571US292 - 3rd party consent valid where D is absent due to lawful detention; 3rd party consent not valid if police remove D from scene to prevent D from objecting.
Coles, 218NJ322 – 3rd party consent not valid where D is prevented from being at location where 3rd party gave consent (& is therefore unable to object) b/c of unlawful detention by police.
Wright, 221NJ456 – Landlord cannot consent on behalf of tenant
Miranda, 253NJ461 - V/wife had apparent auth to consent to search of mobile home & police seizure of D/husband's bag valid, but police search of bag was unlawful & req'd a s/w.

Specific Items of Evidence / Records:

McAllister, 184NJ17 – Bank records require a GJ subpoena based on relevancy (less than prob cause)
Domicz, 188NJ285 – Utility records require a GJ subpoena based on relevancy (less than prob cause)
Reid, 194NJ386 – ISP subscriber information requires a GJ subpoena based on relevancy (less than prob cause)
Briggs, 473NJSup558 (Law Div) - IP addresses require a GJ subpoena, not a CDW (which is required for cell site location info)
Earls, 214NJ564 – Cell phone GPS/location information requires a court order (CDW) based on probable cause, except in emergency situations or where some other w exception applies
Manning, 240NJ308 – Cell phone records require a CDW; an "exigent circumstances" request is unconstr absent (1) pc & (2) police act reas to meet an emergency that does not permit time for s/w
Guillette, 2019WL3543790 – Police can obtain cell phone location info, w/o a warrant, in an emergency situation (D shot his wife, fled w/ 2 guns, and his whereabouts were unknown)
Harris, 457NJSup34 – police cannot use photos improperly provided by cell phone carrier in response to GJ subpoena that did not req photos
Andrews, 243NJ447 – Police can compel D to produce his iPhone passcode under the "foregone conclusion" exception if (1) passcode exists/phone is passcode protected; (2) D knows the passcode (phone is owned and operated by D) and (3) passcode will enable access to the cellphone.
Riley v. CA, 573US783 - Police need a s/w to search a suspect's cell phone seized from the suspect incident to arrest
Lunsford, 226NJ129 - Telephone toll/billing records require a NJSA 2A:156A-29e court order, based on "specific & articulable facts showing reas grounds that the records are relevant & material to an invest" (less than pc). The application can be ex parte, but the records "must cover a finite period of time which does not extend beyond the date of the order."
Long, 119NJ@476; Bodtmann, 239NJSup33; Highsmith, 2016WL1122480; Dyal, 97NJ229 – A court order is required to obtain a D's medical records; a GJ subpoena is insufficient.
DeLuca, 168NJ626 – W/less scrll through D's pager ok if truly exig. circons exist; not decided if valid as search incident to arrest (Do not search arrestee's cell phone w/o warrant)
DeFranco, 426NJSup240 – D (teacher) has no right to privacy in his cell phone number obtained by SRO from school's phone directory; if he did, he waived it by giving phone # to others.
Winslow, 2016WL901942 (unpub'd) – Hotel guest has no privacy right in hotel guest registry; police may obtain guest registry info w/ hotel's consent; Lopez, 395NJSup98 (same for hotel <10 rms)
Jackson, 241NJ547 – Jail Inmate's recorded jail calls may be obtained by GJ subpoena; WT order is not required
McQueen, 248NJ26 - Police must post notice that calls are recorded or obtain a warrant to listen to an arrestee's recorded phone calls made from police dept phone, police cannot listen to atty calls
Armstrong, 463NJSup576 - D lacks standing to challenge and has no reas expectation of privacy in text messages b/t D & 3P seized from 3P's cell phone w/ 3P's consent
Stoveken, 464NJSup86 - Valid GJ Subp req's (1) existence of GJ invest; (2) nature/subject matter of invest & (3) subp'd materials are returnable on a day when GJ is sitting and the subp'd W must have an opp to appear before the GJ. State can issue GJ subp for Prescription Monitor Prog rec's on a showing of relevancy, not prob cause. (Did not decide if patient recs req. prob cause)
Martinez, 461NJSup249 – police putting wire on W who is to be interviewed by D's atty violates D's 6th Am right
Facebook, 254NJ329 - Obtaining "ongoing" "near real time acquisition of prospective electronic communications" requires a wiretap order, not a CDW; can get 20 days & two 10 day extensions
Ross, 256NJ390 - State may use s/w and Dyal subpoena to obtain bullet fragment (evid of a crime) and medical records possessed by hospital, even though defense counsel arranged surgery for D.
Knight, 256NJ404 - State can file motion to compel D's atty to turnover affidavit in D's atty's poss when affidavit is evidence of kidnapping/W tampering & was criminally created to assist in D's defense.

Mistake of Fact or Law by Police

Herring, 555US135 - Search based on dispatcher's mistake (not reckless or grossly negligent) of fact is valid; (In Handy, NJSCt declined to decide whether to follow Herring in NJ)

Handy, 206NJ39 – Search based on unreasonable mistake of fact by police is invalid; search of D based on arrest warrant for D w/ same name, different spelling and dob, was unreas & invalid.

Green, 318NJSuper346 – objectively reasonable mistake of fact does not render arrest invalid (D closely matched description of subject of warrant & was arrested outside warrant subject's home).

Carter, Roman-Rosado, 247NJ488 - NJSCt rejects Heien; under NJ State Const, Ofc's a stop based on an ofc's obj reasable mistake of law is NOT valid

Heien, 574US54 – Obj. reasonable mistake of law (i.e., incorrect interpretation of law) justifies stop; (In Sutherland, NJSCt declined to decide whether to follow Heien in NJ, but probably won't).

Sutherland, 231NJ429 cites Handy for NJSCt "has acknowledged that objectively reasonable mistake of fact" by police will not render a search/arrest invalid; but refuses to decide mistake of law.

Emergency Aid / Exigent Circumstances / Hot Pursuit:

Castro, 238NJSup482 – Warrant not req'd where there is "prudent and reas based belief that there is a potential medical emergency of unknown dimension."
Boud, 240NJSup171 – Warrant not req'd for police to enter house where burglary in progress is reported.
Frankel, 179NJ586 – Police can make warrantless entry into home after "open line" 911 call where defendant denied making call, was nervous & refused to allow police to enter.
Edmonds, 211NJ117 – emergency aid search valid if: (1) ofc. had obj reas belief that emergency req'd immed assistance to protect life or prevent serious injury, and (2) there is a reas. nexus b/t emergency and area searched. (eliminates Frankel's 2nd prong (search not motivated by desire to find evid); ct no longer considers officer's subjective motive); but see Manning, 240NJ308 (insuff)
Hathaway, 222NJ453 – Police can make W/less entry into hotel room where casino security corroborated a guest's report that an armed robbery occurred and unknown V's/D's may be located.
Vargas, 213NJ301 – The comm-caretaking doctrine does not justify W/less entry of home w/o some type of emergency; welfare check on D who has not been seen insuff; Mordente 444NJSup393
Scott, 231NJSup258/18NJ406 – Warrant not req'd where citizen calls-in a DV complaint.
J.A., 233NJ432 – "Hot pursuit" entry into home req's: (1) pc (2) immed/continuous pursuit from scene, & (3) poss evid destruction/threat of violence; "find my iPhone" did not justify entry into home
Welsh v. Wisc., 466US740 – Police generally may not follow suspect into his home under "hot pursuit" doctrine where suspect is fleeing from a minor / traffic offense
Boite, 115NJ579 – Police in hot pursuit of DWI suspect cannot make warrantless entry into suspect's home; insufficient "exigent circumstances" to justify warrantless entry.
Liberatore, 293NJSup580 – Ofc who arrests D for minor traffic viol may pursue resisting/escaping arrestee into his dwelling w/o a warrant.
Nikola, 359NJSup573 – Ofc who conducts "Terry" stop of driver for DWI may follow driver into garage while she retrieves credentials and arrest driver w/o a warrant.
Walker, 213NJ281 – D answered door smoking marij, threw it & tried to shut door. Police can make warrantless entry into home when (1) exig circum. exist & (2) exig. cir. were not police created.
Craft, 425NJSup546 – Police w/ arrest warrant for D for shooting, let in to D's house, can make W/less entry into D's bedroom after D's cellphone was called & police hear it ringing inside bedroom.
Payton v. NY, 445US573; Brown 205NJ133 – Felony arrest warrant authorizes ofcs to forcibly enter D's house to arrest him if there is reason to believe D is inside; absent arrest warrant or consent, police cannot enter D's home to arrest him;
Jones, 143NJ4 – Police with arrest warrant for even minor infraction (DP poss. drug para.) may forcibly enter suspect's residence to arrest fleeing suspect.
Bookman, 251NJ600 – Hot pursuit does not permit police with ATS warrant for D-A to pursue D-B into 3P home; police action must be obj reas; factors: (1) continuous pursuit; (2) seriousness of warrant offense; (3) ofc knowledge of seriousness of warrant offense; (4) emergency (threat to police; destruction of evid; escape)
Bruzzese, 94NJ210 – Police who have arrested a D can "remain at his elbow" and follow him into his bedroom and seize evid while D gets his shoes (Chrisman, 455US1).
Legette, 227NJ460 – Bruzzese only applies to arrested D's - not to detainees held during an investigative detention, even if police possessed pc to arrest the D; police may not follow D detained during invest det into D's home while D retrieves ID w/o D's express consent.
Steaqald v. US, 451US204 – Absent search warrant, consent or exig. circum., police may not enter a 3P's house to arrest suspect w/ or w/o an arrest warrant; Brown 205NJ133
Boynnton, 297NJSup382 – Steaqald applies to private residences but not unlocked single occupancy public restroom in a tavern.
Miller, 342NJSup474 – Police may enter a residence based on an arrest warrant if there is an "objectively reas basis" for believing: (1) the residence is the home of the person named in the arrest warrant; and (2) that the suspect was present at the time of the execution of the warrant.
Bell, 388NJSup629 – Illegal search of 3rd party's residence resulting in arrest of D on valid arrest warrant does not require suppression of D's subsequent confession.
Cleveland, 371NJSup286 – police w/ arrest warrant for D may enter a motel room reg'd to a 3P to arrest D w/o a s/w where police see D inside the motel room.
Henry, 133NJ104 – "consent once removed doctrine" - If initial police entry into home is consensual, police may then enter, arrest and search incident to arrest based on prob cause w/o exigent circumstances. Undercover invited into home and makes buy inside, then exits; 15-20 min later, backup goes to door and knocks, door opened, police see individual running, ofcs run in and arrest D. Ct viewed case as one continuous transaction (4-3 decision, very close case).
Penalber, 386NJSup1 – Police cannot enter apt through open apt door w/o arrest warrant to arrest D who made sale to u/c det. inside apt. 30-45 minutes prior; not a single, continuous transaction.
Jefferson, 413NJSup344 – Police had art susp to conduct Terry stop of D about a gun & saw D in apt peering out from behind door; they ordered D to show hands, he showed hands but could not be seen from waist down. D tried to shut door and ofc. wedged herself in doorway. D could be arrested for resisting, but police could not enter home w/o a warrant. Entry of home w/o warrant or exception was unconst; it was not hot pursuit into a home of arrest that was set in motion in a public place. Subseq sweep/search invalid.
Vera (AD, unpub) – 911 calls of shots fired, report that suspects entered specific apt bldg., spent shells, and sounds inside justify warrantless entry as "exig circumstances"
Lewis, 116NJ477 – plain view observ of drugs on table unlawful where police stick foot in door to prevent D from closing it while speaking with D

Investigative Detentions / "Terry" Stops

DeLorenzo, 166NJSuper483 – State bears burden of proving ofc possessed reas, art susp by a preponderance of the evidence
Bard, 445NJSup145 – Seizure of D's hand/pat frisk of back pocket justified during **field inquiry** by high crime area, 1am, nervous D; Tpr asks D "what's going on?" D ignores Tpr, keeps head down, puts hand behind his back into back pocket; ignores command to show his hand, and continues walking toward Tpr, coming w/in 15'. Tpr justified in seizing D's hand and pat frisking D's back pocket; police request to show hands during a field inquiry does not automatically = a Terry stop
Rodriguez, 172NJ117 – Req. for ID does not auto convert field inquiry into Terry stop; but isolating D from others & asking accusatory overbearing questions = Terry stop
Boston 469NJSup223 – Passenger in traffic stop is seized, and police cannot request/demand ID from pass unless police have articulable susp for pass; police can ask pass questions, pass can refuse to answer, but police cannot request ID from pass w/o art susp; when police arrest driver, they can ask pass if pass has a NJDL = if "yes," then ok to ask for name/ ID; if "no," then can't ask for name/ID.
Stampono, 341NJSup247 – Police may approach car and question D sitting in car w/o reas susp, but D can refuse to answer questions and leave w/o showing ID.
Sloane, 193NJ423 – After arresting driver, police may ask passenger for ID when passenger asks for keys to the car; NCIC check of D's info does not require reasonable suspicion
Siriani, 347NJSup382 – Police conducting stakeout for homicide suspect can approach & request ID from driver of car that stopped in front of house at 2:00am
Nyema, 249NJ505 – dispatch of 2 b/m's fleeing robbery does not justify car stop of car w/ 3 b/m's driving away from scene of robbery w/o more details (only race, sex & location insufficient)
Rosario, 229NJ263 – Ofc. who parks behind D thereby blocking D's car in parking space, shines alley light on D, & asks D for license & reg = Terry stop req'g art susp; not field inquiry.
Dickey, 152NJ468 – Handcuffing suspect does not automatically elevate permissible Terry stop detention to illegal arrest req'g prob cause
Stoval, 170NJ346 – Ofc's statement that he suspected D of drug trafficking, req for consent to search, "please stand by, this will just take a few moments" = Terry stop
J.G., 320NJSup21 – Ofc's questions presupposing criminal conduct "you don't have anything you shouldn't have?" convert field inquiry into Terry stop. 3 factors: (1) were the ofc's questions "conversational" in manner; (2) did the ofc make demands or issue orders; (3) was ofc's manner overbearing or harassing.
Contreras, 326NJSup528 – Ofcs direct Ds to get off train & ask Ds if they were carrying any contraband = Terry stop; asking D if he has contraband converts field inquiry into Terry stop
Hall, 253NJSup32; Mason, 164 NJSup1 – Terry stop of D + "have anything on you?" = custodial interrogation requiring M warnings.
Reininger, 430NJSup517 – Car stop + "anything illegal in car?" & "any guns in car" = M warnings not req'd; police saw gun cases in back seat & could open door & seize them.
Hornberger v. ABC, 351NJSup577 – During routine traffic stop, ofc needs some susp of wrongdoing to request ID from passengers (dicta); Mai, 2009WL276716
Tucker, 136NJ158 – D seized when D flees upon seeing police, and one police car pursues D, and radios a second car to block D's path, even though no one yelled "halt"; flight from police w/ nothing else is not a sufficient basis to stop D; see also Williams, 410NJSup549 & Dunbar, 434NJSup522 (fleeing from police cases).
Doss, 254NJSup122 – Crowd in high crime area, 11:30pm, someone yells "police," 4-5 people run = art susp to conduct a Terry stop; D's failure to obey ofc's order to "stop" constitutes obstructing (2C:29-1), giving police pc to arrest D and conduct a full search incident to arrest.
Goldsmith, 251NJ384 – Ofcs blocking D's path (w/o saying "stop") and asking questions = seizure req'g art susp
L.F., 316NJSup174 – D walking away from police and putting something in his pocket while walking does not constitute sufficient art susp to conduct a Terry stop
Dangerfield, 339NJSup229 – Pedaling bike away upon seeing police does not constitute sufficient art susp to conduct a Terry stop
Hughes, 296NJSup291 – No seizure occurs when police car follows D (on bike) w/o activating overhead lights or ordering D to stop
Richards, 351NJSup289 – D may walk away from police / refuse to answer questions when police have no art susp to detain D; see Caldwell, 158NJ452.
Crawley, 187NJ440; Williams, 192NJ1 – flight from a Terry stop (even an unconst one) constitutes obstruction in viol of NJSA 2C:29-1; evid later discovered is admissible
Reece, 222NJ154 – D must coop with ofc's invest stop, even if it is unconst; D has a duty to submit to arrest (legal or illegal); D may only use force against police if police employ unlaw force
Branch, 301NJSuper 307 (rev'd on other grounds) – Police who have art susp to conduct a Terry stop may use non-lethal force to effect the stop
Fede, 237NJ138 – NJSA 2C:29-1 obstructing requires an "affirmative act"; refusing to remove an already fastened door chain does not constitute obstructing
Lashinsky, 81NJ1 – D has a duty to obey ofc's reas orders; D's failure to obey constitutes obstructing in viol of NJSA 2C:29-1 (photographer who would not step back from car accident).
Perlstein, 206NJSup246 – D's refusal to provide ofc with DL/reg/ins so that ofc could issue citation constituted obstructing in viol of 2C:29-1; 39:5-25 allowed arrest of driver who refused to provide DL
Camillo, 382NJSup113 – D's refusal to give ofc his name/ID, needed by ofc to prepare an incident report for a trespass invest. w/o phys. interference, is not obstructing in viol of 2C:29-1
Wanczyk, 201NJSup258 D's verbal and physical resistance of ofc's lawful "pat down" frisk constituted obstructing in viol 2C:29-1
Brown, 456NJSup352 – D's physical resistance to valid pat frisk following valid Terry stop justified D's arrest and transport to police dept for warrantless strip search
Hernandez, 338NJSup317 – D's refusal to obey ofc's order to leave area while police were arresting D's brother constituted obstructing in viol of 2C:29-1.
Harris, 384NJSup29 – Police req that D spit out what was in his mouth during invest detention was reasonable, but they had no pc to conduct subsequent strip search.

Demanding ID & Detaining Individuals to confirm ID

Coles, 218NJ322 – Citizens need not carry ID; police w/ reas susp can detain D for a brief & reas time to confirm ID; Police could detain D while they asked D's family to confirm D's ID.
Chisum, 236NJ530 – Police called to hotel noise complaint and decide not to issue summons to guest who turned down music cannot then detain and demand ID from all occupants in the hotel room.
Shaw, 213NJ398 – Police w/ fugitive warrant for a particular b/m suspect cannot stop random black male exiting multi-unit apt and detain him until he produces ID
Siriani, 347NJSup382 – Police conducting stakeout for homicide suspect can approach & request ID from driver of car that stopped in front of house at 2:00am
Perstein, 206NJSup246 - D's refusal to provide ofc with DL/reg/ins so that ofc could issue citation constituted obstructing in viol of 2C:29-1; 39:5-25 allowed arrest of driver who refused to provide DL
Boston, 469NJSup223 - Passenger in traffic stop is seized & police cannot request/demand ID from pass unless police have articulable susp for pass; police can ask pass questions, pass can refuse to answer, but police cannot request ID from pass w/o art susp; when police arrest driver, they can ask pass if pass has a NJDL = if "yes," then ok to ask for name/ ID; if "no," then can't ask for name/ID.
Sloane, 193NJ423 – After arresting driver, police may ask passenger for ID when passenger asks for keys to the car; NCIC check of D's info does not require reasonable suspicion
Homberger v. ABC, 351NJSup577 – During routine traffic stop, ofc needs some susp of wrongdoing to request ID from passengers (dicta); Mai, 2009WL276716
Camillo, 382NJSup113 – D's refusal to give ofc his name/ID, needed by ofc to prepare an incident report for a trespass invest., w/o phys. interference, is not obstructing in viol of 2C:29-1
Rule 3:3-1(d)(4) & 7:2-2(f)(4) authorizes police to arrest/request a warrant rather than a summons when D's "address or ID is not known and a W is necessary to subject D to the jurisdiction of the court"

Stolen Property / Abandonment

Brown, 216NJ508 – D has no privacy interest in property in which he is trespassing; State must prove by PotE that police have obj basis to believe property was abandoned or D was a trespasser.
Arias, 283NJSup269 – D has no privacy int. in property he left behind in home he commandeered at gunpoint.
Lugo, 249NJSup565 – D driving stolen car has no reas. expectation of priv. in contraband he hid in that car.
Carroll, 386NJSup143 - D has no expectation of privacy in bag containing CDS that he abandoned in crashed stolen car when he fled from police
Bohuk, 269 NJSup 581 – D has no expectation of privacy in stolen car he is driving.
Harris, 298 NJSup478 – D has no expectation of privacy in conspirator's apt he forcibly entered.
Wilson, 442NJSup224 – D has no expectation of privacy in exterior drainpipe of stranger's home (see also Ford, 278NJSup351).
Taylor, 440NJSup515 – Passenger may have privacy interest in a stolen car, passenger's knowledge that car was stolen is a relevant factor.
Randolph, 228NJ566 - D has no privacy interest in / standing to challenge a search of real property that was: (1) abandoned, (2) in which D was trespassing, or (3) from which D has been evicted.
Chapman, 332NJSup452 – police can search bags after driver and all occupants disclaim ownership
Carvajal, 202NJ214 -police can search duffle bag after D denied ownership & all apparent owners disclaimed interest in property (but see Johnson, 193NJ528, holding disclaiming bags is not abandonment where disclaimer is equivocal and police do not ask all other potential owners)
Garrett, 256NJ241 - police can search suitcase "abandoned" by D who fled from arrest/Terry stop after police told D they are going to arrest him & unknown 3P can't pickup suitcase
Ellis, 246NJSup72 – police can search bags when they ask 2 D's for permission; D1- "they're not ours, you can search them" & D2 is silent. Failure to object to search=consent.

Securing Premises Pending Application / Issuance of a Search Warrant; Protective Sweep:

Illinois v. McArthur, 531US326 – Police can temporarily secure scene pending S/W; four factors: (1) prob cause; (2) reas fear of destruction of evid; (3) reas accomodation of law enforcement and privacy interests; (4) limited duration of seizure.
Myers, 357NJSup32 – Ofcs can enter and secure premises pending issuance of a S/W where they have prob cause, suspect's whereabouts unknown, gun involved, and fear of ofc safety and possibility of destruction of evid present. See also Speid, 255NJSup398 (upholding right to secure, but invalidating search in that case).
Lashley, 353NJSup405 – Search invalid where police enter apt. w/ ram to "secure" it after C/I makes buy inside and suspects inside are unaware of police investigation.
Davila, 203NJ97- protective sweep of home does not require an arrest; Req's: (1) police lawfully in home (incl. consent); (2) have reas art susp that area swept harbors person posing danger; (3) sweep is cursory/brief; & (4) limited to areas where a person could hide (See also Bryant, 227NJ60)
Radel, & Tarress, 249NJ469 – police arresting D outside a home may conduct a protective sweep of home if they have art susp that persons are inside and pose an imminent threat to ofc safety
Cope, 224NJ530 – protective sweep of ext back porch next to room where D was arrested justified where multiple people were in house and D ran onto porch briefly

Search Warrants (Misc.)

Pinero, 369NJSup65 - Prob cause exists to search thief's residence where stolen items are likely to be used/stored there; also, plain view & consent.
Finesmith, 406NJSup510 - Reas continuation doctrine (1s/w executed 2x) 2nd search must be continuation of 1st not new&separate; 2nd entry must be reas under TotC (w/in 2 hrs)
Watts, 223NJ503 – police with s/w for D's person can conduct ltd search of his person outside on street, then move D to a more secure location and do a more thorough search (reas. contin).
Bivins, 226NJ1; DeSimone, 60NJ319 – s/w authorizing search of "all persons present" at location for which prob cause has been established is valid; may include people leaving premises.

"No Knock" / Knock & Announce

Rockford, 213NJ424 - Use of "flash bang" possible with "k&a" s/w; Ct. looks at TotC to determine if police conduct was obj. reas; waiting 25 sec after k&a reas.
Jones, 179NJSup377 - "no knock" s/w justified where D has a arrest for asslt on police and unl. poss. weap. and pled guilty to lesser weapons charge
Sanchez, 179NJSup409 - "no knock" s/w justified based on D's 9 year-old arrest for agg. asslt. and unl. poss. weap.
Tavares, 364NJSup 496 – "no knock" s/w not justified solely b/c drugs can be easily destroyed.
Carlino, 373NJSup377 – "no knock" s/w justified by surv. camera outside drug dist. location; police can search occupants who they have art susp to believe are involved based on statements, body language time/manner of presence.
Rodriguez, 399NJSup192 – s/w valid where police knock, wait 15-20 sec, knock & announce, wait 15-20 more second, then ram door
Robinson, 200NJ1 – s/w valid where police execute k&a s/w by k&a, waiting 20-30 sec, then use flash bang & ram door (ct does not address flash bang issue)(note that App. Div. opinion 399 NJSup400 held that violation of k&a rule req'd suppression of evidence, but the NJSupCt did not reach this issue)
Nieves, 476NJSup405 - officers executing a k&a s/w must wait more than 5 second before forcibly breaching door; evid suppressed b/c ofcs did not wait a reasonable amount of time after k&a
Caronna, 469NJSup462 – exclusion of evid is remedy for viol of k&a req; flagrant violation of k&a req renders search warrantless, so evid suppressed absent exception to s/w req (such as exigency)
Staleness
Harvey, 2F3d1318 - 13 mailings of child porn to D 2 to 15 months before issuance of s/w not stale;
Blaurock, 143NJSup476 – 18 days b/t last reported surveillance and issuance of s/w in drug case not stale

Multi-unit Apartment Buildings

Sheehan, 217NJSup20 – S/w authorizing search of entire multi-occupant (as opposed to multi-unit) bldg. valid; occupants gen. have access to other occ's rooms.
Marshall, 398NJSup92 - S/w descrip. auth'g search of "apt of D w/in 1 Main St" gen. invalid – must be "reas accurate" unless add. invest would endanger secrecy of invest.
Sencion, 454NJSup25 - Police cannot use slim jim to open locked front door of multi-unit apt bldg; police can only enter locked common areas w/ permission of any tenant or landlord.
Williams, 461NJSup1, 244NJ27 - Boarding house resident has an expectation of privacy in common areas beyond his bedroom (NJSCT has granted cert)
Boone, 232NJ417 – S/w for multi-unit apt bld must identify D's apt (Berry, 471NJSup76 – exception to Boone – if multi-unit apt bldg. is abandoned)

Domestic Violence Search Warrants

Hemenway, 239NJ111 – 2C:25-28 DV s/w for weapons req's pc: (1) D committed an act of DV; (2) a s/w for weapons is necessary to protect V; (3) weapons are located in place to be searched.
Harris, 211NJ566 – Weapons seized by police executing a 2C:25-28j DV search warrant may be used in a subsequent criminal prosecution if the illegal nature of the seized weapons was immediately apparent without a "further search" to determine that illegality; recording serial# of gun and entering serial # in NCIC is not a "search".
Evans, 2016WL3351935 (unpub'd) – seizing gun during DV s/w, then running D through NCIC to see if D is a felon is not a search; gun can be used in prosecution for certain persons.

Silver Platter Doctrine

Burdeau v. McDowell, 256US465; Sanders 185NJSup258; Droutman, 143NJSup322; Frank, 112NJSup592; Mollica, 114NJ329; Pohle, 166NJSup504; Kelly, 61NJ283; Scrotsky, 39NJ410 – 4th Am. does not apply to searches/seizures by private actors; provided no state action, police can use evid. illegally obtained by 3P.
Wright, 221NJ456 – Evid must be suppressed when landlord enters apt, sees drugs, calls police, who enter w/o a warrant, see drugs, get resident's consent. (Police should have applied for a s/w).
Shaw, 237NJ588 – 3rd party intervention doctrine cannot apply to homes, apts, or motel rooms; 3P who conducts illegal search may pass that info to police, who may use it to apply for a s/w while securing premises, but police cannot enter the premises to see for themselves w/o a warrant.

Custody

Functional equiv of formal arrest, deprived of freedom of action in any signif way. But, "custody" for M purposes is more than a mere "seizure" and gen requires police-dominated atmosphere / compelling pressure that renders D susceptible to self-incrim. Factors: Ofc's stated intent, time, place & length of interrogation, nature of questions, police conduct, status of interrogator & suspect.

Stansbury v. CA, 511US318 - ofc's subj view that D is a suspect, not disclosed to D, is irrel to whether D is in custody; Brown 352NJSup338; Keating, 277NJSup141; Ahmad, 256NJ592

Pearson, 318NJSup123 - D asked to come to pros ofc/left alone in room for 1 hr/not told she could leave/2 ofcs sat on each side & took taped statement was in custody;

Marshall, 148NJ89 - mere presence at police station does not = custody; see also Prudden, 212NJSup608, Lacaillade, 266NJSup522

"General, on scene questioning" is not custody & M warnings are not req'd. Marshall, 148NJ89, Purnell, 310NJSup407, Godfrey, 131NJSup168, Smith, 374NJSup425; Reininger, 430NJSup517

Police focus on particular suspect during questioning does not automatically = custody. Graves, 60NJ441, Marks, 201 NJSup514, Coburn, 221NJSup586

JDH, 171NJ475 - Juv D not in custody where police coach crime V to call D at his home and ask D questions while police surreptitiously recorded phone call.

Berkemer v. McCarty, 468US420 - shows diff b/t seizure and custody; MV stop on highway is a "seizure" but not "custody"; M warnings not req'd; see Weber, 220NJSup420

Toro, 229NJSup215 - M warnings not req'd for Terry stop, even w/ pat-down frisk (MV stop, police see package believed to contain CDS, police order D out of car, pat down, ask 'what's in the package?') - not cust b/c D not told he was under arrest, not cuffed, not searched beyond frisk, detained briefly, and only asked a few, noncoercive questions; see also Hickman 335NJSup623, Nemesh 228NJSup597 (accident scene), Pierson 223NJSup62 (30 min inv. det. at fire), Smith, 374NJSup425 (DV scene)

Harris, 181NJ391 - No 5th or 6th Am. viol. where cooperating W (at police req) wrote letter to incarcerated D (about crime other than crime for which D incar'd) & D replies

McLaughlin, 310NJSup242 - D not in cust where police buy D's plane ticket from Fla., tell D he is free to leave, and D holds return ticket

Dispoto, 189NJ108 - D advised of M rights while not in custody, then taken into custody & questioned w/o readmin M warn = statement may be admiss, maybe not; TotC test is used; no bright line rule; Ques: were pre-cust warnings part of a continuing pattern of interaction b/t D & police, and did any intervening events dilute the warnings.

Nyhammer, 197NJ383 - Police need not tell D that he is a "suspect" (in addition to giving him M warnings), in order for waiver to be valid & statement to be admiss.

Ct: b/c it is often unclear exactly when D is "in custody," it is "difficult to fault police" for advising a suspect of his M rights at the earliest state of an interrogation.

Ahmad, 246NJ592 - Police must give M warnings to victim who is in custody & is really a suspect (note that V was more like a suspect in this case)

Interrogation & Warnings

Ri v. Innis, 446US291 - Interrogation is express questioning or its functional equiv. (any words/actions that police should know are reas likely to elicit an incrim response)

Brewer v. Williams, 430US387 - Christian burial speech constitutes interrogation; D's statement was obtained in viol. of his 6th Am. rts.

Ramos, 217NJSup530 - Not interrog where police ask "where are your glasses," D replied "I don't wear glasses" (lying) and suspect wore glasses.

Sanchez, 224NJSup231 - Not interrog where police ask co-occupant "who owned suitcases?" and D "blurted out" he did.

Ward, 240NJSuper412 - Interrog where ofc. puts photos of 2 cooD's in front of D and advises D he's being charged w/ robbery, and D replies "I don't know KM & SS"

Brown, 282NJSup538 - Interrog where police respond to D, who asked why he was being arrested, w/ 45 min-1 hour detailed account of evidence, and D then makes admission

Hall, 253NJSup84 - Interrog / M req'd where police ask D "do you have anything on you?" during pat down frisk where 7 other officers were present; statement inadmiss

Mason, 164NJSup 1 - Interrog / M req'd where police stop D, tell D they are conducting drug invest and ask D if she has drugs; statement inadmiss (but see Hummel, below)

Hummel, 2016WL4784096NJSup (App Div unpublished) - boots admiss where D turned over boots to police in response to non-M'd questions re boots; D produced physical evid, not test revealing contents of her mind (note 232NJ196 NJ Supreme Court suppressed contents of purse as invalid inventory search, but seizure of boots remains valid).

Wright, 444NJSup347 - Interrog / M req'd where police "update" D detained shortly after robbery for show-up that "V is coming over to ID him" and "another ofc found the gun" leading to blurt out

A.A., 240NJ341 - Interrog / M req'd where police call juvenile's mother to police station and listen (w/ unaided ear, in room) while mother speaks to juvenile

Presha, 163NJ304 - Parent should be present during interview of juv whenever possible; police must use best efforts to locate parent prior to interview & give parent opp to speak to juv in private

Lozada, 257NJSup260 - Not interrog to ask D about his comfort (after D req'd an atty)

Beckler, 366NJSup16, Cryan, 363NJSup442 - Statements "volunteered" by D are not interrogation / M warnings not req'd

Pillar, 359NJSup249 - Statement inadmiss where D is M'd, req's atty, then asks police if he can make an "off the record" statement, & police let him (w/o add. M warnings)

Fletcher, 380NJSup80 - Statement inadmiss where D makes statement aft ofc's promise that he could make "off the record" statement, then 2nd ofc. M'd D & took statement

Miller, 76NJ392 - D's statement admissible despite ofc telling D he's not a criminal but needs treatment and he must tell truth so police could help D w/ his problem (4-3 decision)

A.S., 203NJ131 - D's statement inadmissible where police tell D that she would actually benefit by answering questions (undercuts M warnings)

Puryear, 441NJSup280 - D's statement inadmissible where police tell D that he "could not hurt himself and could only help himself" by giving a statement (undercuts M warnings)

L.H., 239NJ 22 - D's statement inadmissible where police tell D "truth" would "help him" and "set him free"; he needed "help" and "counseling" rather than jail, and minimized his crime

O.D.A., 250NJ408 - D's statement inadmissible where police tell D M is "just a formality," his interview would remain "confidential, between us," and talking "could not hurt, will only help" D.

Vanderver, 314NJSup124 - D need not be told his statement to police is being surreptitiously tape recorded.

Patton, 362NJSuper16 (W statement); Chirokovskovic, 373NJSup125 (DNA lab report) - Statement inadmiss where police create false physical evid to use in interrogation.

Cunningham, 153NJSup350 - M warnings not required for routine booking / ministerial questions (name, address, etc.) (see also Fann, 239NJSup507; Mallozzi, 246NJSup509)

Koch (2011WL4434949, AD, unpub'd) - custodial "sniffing of D's breath" is interrogation req'g M warnings.

Hager, 362NJSup377 - (1) no specific words req'd; but words used must convey substance of all 5 M warnings; statement inadmiss even if all 5 warnings not given b/c D interrupted; (2) as long as the statement is voluntary, remedy for a M viol is suppression of D's statement, NOT evid seized as a result of the statement (i.e., fruits of a vol. but unwarned statement, are admiss)

Pre-M speech / "pep talk" to D in car on way to PD before being interviewed: Non-NJ cases have held this is not interrogation, even after an invocation, but questionable.

See Thomas, 2004WL3059794; Payne, 954F2d199; Moreno-Flores, 33F3d1164; Thierman, 678F2d1331 (This practice is disfavored, and BWCs will likely result in suppression of statement)

Exigent Circumstances / Public Safety Exception

A.S., 227NJSup541 - under p.s.e., police need not give M warnings prior to ?'g D about gun location if questions are neces to public safety; Diloreto, 180NJ264; NY v. Quarles, 467US649

Stephenson, 350NJSup517 - p.s.e. did not apply where threat was not immediate, gun was not actually seen by anyone, and gun was not believed to be in public area;

4 req's: (1) obj. need to protect police/public; (2) from immediate danger; (3) involving a weapon; (4) questions were related to danger and reas. neces for public safety

O'Neal, 190NJ601 - Recog'd existence of p.s.e. in NJ; but not met. Police stopped D after drug deal, pointed to bulge in D's sock & asked "what's this?"; not a valid p.s.e.; M warnings req'd.

Melendez, 423NJSup1 - P.s.e. can apply post-M; police can question D about location of a gun after D invokes right to silence/atty as long as p.s.e. elements are satisfied

Waiver of rights

NC v. Butler, 441US369; Warmbrun, 277NJSup51; Kremens, 52NJ303 - written waiver not req'd; waiver of M rights can be inferred from words/actions

CT v Barrett, 479US523 - statement admiss where D won't give written statement w/o atty but will give verbal statement

Reed, 133NJ237 - police must advise D that atty retained by family member is present and wants to talk to D

Cook, 179NJ533 - Reed only applies where there is an atty/client relationship; inquiries by PD about D, who had not been charged, did not = atty/client relationship

O'Neill, 193NJ148 - Question first, M warn later; if D makes incrim statements during cust. inter. pre-M, police should advise D that his pre-M statement could not be used against him, Mirandize D & have a diff. ofc. question D the 2nd time. Ct also must consider (1) the extent of the pre-M interrogation & nature of D's admissions, (2) time b/t pre- and post-M interr., (3) same or diff ofc, (4) was D told pre-M warnings could not be used against him, and (5) degree to which post-M interr. is a continuation of pre-M interr.

Bullock, 253NJ512 - Problems: Question first, M warn later; pre-M "why are we here?"; no M form and no request to waive, "you're not in trouble".

Erazo, 254NJ277 - If D not in custody for 1st interview, then O'Neill is not implicated, and no need to analyze 2nd custodial interview under O'Neill factors.

AGD, 178NJ56 - To obtain a valid waiver of M rights after a criminal complaint is filed, police must advise D that a criminal complaint has been filed against him

Vincenty, 237NJ122 - Police must give D "a simple declaratory statement" of the specific charges filed against him at outset of interview, either immed before or after M warnings, prior to waiver;

Nyhammer, 197NJ383 - Police need not inform D he is a suspect.

Sims, 250NJ189 - If a complaint has not been issued, police do not have to advise a suspect of the crime they are investigating at the outset of the interview (Dolison)

Diaz, 470NJSup495 - Police must inform suspect of his "true status" at outset and cannot lie about seriousness of charges he is facing (e.g., saying "drug dist" in a SL4DID case).

Cotto, 471NJSup489 - Police need not inform D he is arson suspect where no complaint issued; M waiver valid where police arrest D on ATS warrant and tell D he is under arrest on ATS warrant.

Hahn, 473NJSup349 - Police investigating crash need not inform D that 2 V's died to obtain valid waiver

Sanchez, 129NJ261 - After indictment, police initiated contact w/ D is barred; state cannot obtain valid waiver of D's rt. to atty, even if D is advised of M rights/complaint, if state initiated the contact w/ D; see also Tucker, 137NJ259 (but Sanchez does not apply to post-complaint, pre-indictment time period); AGD, Perez, 334NJSup296

Surreptitious Questioning

U.S. v. Henry, 447US264 – surreptitious questioning of incarcerated D by u/c informant does not violate 5th Am. and M warnings not req'd, but it does violate 6th Am if there is an agency relationship b/t police and informant; but see Scales, 217NJSup258 (no agency relationship, and therefore no 6th Am. viol.); Long, 119NJ439
Kuhlmann v. Wilson, 477US436 – Rt. to counsel not violated unless CI takes some action, beyond merely listening, designed to elicit an incrim response from D.
Leopold, 305NJSup70 – Rt. to counsel not violated where D gives note to coD, who instead gives note to police.
Watkins, 260NJSup549 – D asked CI for help finding false alibi WI, CI told police, CI then gave D # for u/c det. posing as CI's cousin; D's statement to u/c det. violated 6th Am
Maine v. Moulton, 474US159 – 6th Am. rt. to counsel violated where state uses CI to record and delib. elicit incrim. statements from indicted co-D.

Reinitiation of interview following invocation / ambiguous waiver / 5th and 6th Amendment

Silence:

Mich. v. Mosely, 423US96 – Police must "scrupulously honor" invoc; statement admss where D invokes rt to silence, police immed stop ?g, wait 2 hours, re-M D, then ask about diff crimes.
Faucette, 439NJSup241 – Police can reinitiate comm w/ D after D invokes rt. to silence & ques. D on same crime (here, break was 14 hrs); police must readminister M warnings.
Hartley, 103NJ252 – Police must readmin M if police reinitiate comm w/ D aft D invokes rt to silence; statement viol'g Hartley may be used to impeach (Burris 145NJ509, Jones 308NJSup15).
Fuller, 118NJ75 – Hartley full readvisement only req'd if police reinitiate comm w/ D; readvisement not req'd if D initiates comm. w/ police aft invoking rt. to remain silent
Shelton, 344NJSup505 – Police must readmin. M warnings after D refuses to give a written statement after giving oral statement
Melvin, 65NJ1 – Once D advised of M warnings and has not invoked them, there is no need to readmin M warnings; also Larry 211NJSup221, Perez 334NJSup296
Miller, 76NJ392 – repeated questioning okay; police need not stop asking questions after receiving first denial; psychologically oriented techniques not inherently coercive
Galloway, 133NJ631 – need "very substantial psychological pressure" on D for court to find that D's will was overborne.

Ambiguous Invocation / Clarification / Reinitiation by D:

Dickens, 192NJSup290; – Police have a duty to clarify "ambiguous" invocation of rt. to remain silent or attorney. Larry, 211NJSup221; Chew, 150NJ30; Johnson, 120NJ263
Jackson, 272NJSup543 – Police have duty to clarify where D hangs head/says he's afraid to tell b/c someone might hurt him/his gf & 1 det tells ?g det "D not going to talk for personal reasons"
Rhodes, 329NJSup536 – police fail to scrup honor & statement inadmiss where D invokes rt to remain silent & hours later, ofc. initiates comm. w/ D about family/drug prob
OR v. Bradshaw, 462US1039 – D's req for drink/bathroom is not "reinitiation" of comm. by D; ques. is "did D invite discus of crimes for which he's held"; Chew, 150NJ30
Adams, 127NJ438 – M waiver can be limited in scope; see also Gerald, 113NJ40 (both cases: D agrees to speak but refuses to give written or recorded statement)
Aziz, 2016WL1261320 – "I understand but I don't agree" is an unambiguous assertion of D's right to remain silent.

Requests to speak to 3rd parties:

Harvey, 121NJ407 – Police must readminister M warnings aft D asks to speak to father; req to speak to father (aft 3 days in custody) before talking about crime = invocation
Maltese, 222NJ525 – D's repeated (10x) requests to speak to his uncle, who was "better than an atty" = invocation
Roman 382NJSup 44 – Req to speak to parents by otherwise cooperative D = not an invocation but simply a req to take a break from the interrogation
Brooks 309NJSup43- where D waives M rights & states "he'll tell all" "if he could just call his mother" = not an invocation; statement admss; readministration not req'd
Timmendequas, 161NJ515 – D's req to s/w housemate = not an invocation where D did not req private mtg & mtg occurred in police presence
Martini 131NJ176 – D's req to speak with his potential coD prior to speaking with police = not an invocation
Faucette, 439 NJSuper241 – Adult D req'g that his mother be present for interview = not an invocation
Roman, 382NJSuper 44 – D's requests to speak with his parents = not an invocation
Fare v. Michael C., 442US707 – juv D's req to speak with his probation ofc = not an invocation (under federal "clear & unambiguous" std)

Requests for breaks, ambiguous assertions of silence, etc.

Johnson, 120NJ263 - long periods of silence by D and statements "I can't talk about it" & "nothing to say" = invocation of right to remain silent
Bey I, 112 NJ 45 – D "would have nothing to say" = invocation
S.S., 229NJ360 – "That's all I go to say, that's it," "that's all I can say," "I really got to talk about it?," and "I don't want to talk about it" = invocations
Aziz, 2016WL1261320 – "I understand but I don't agree" is an unambiguous assertion of D's right to remain silent
Dorff, 468NJSup633 - "That's why I feel I might need a lawyer" is an invocation; Ofc's response "[your decision] but if you didn't do anything, you [I] don't need to have" viol Miranda
Rivas, 251NJ132 – "the lawyer, if you know a lawyer," "where can I find [one] my phone is with you" = ambiguous invocation
Young, 2023WL2638003 (unpub'd) – D initially refused to sign waiver, said "I ain't sharing with you" & "I don't have no type of information right now for you" = invocation; (explaining signing waiver: as meaning "you understand" is not accurate; waiver means "you understand and are waiving the right to remain silent" and will speak to police.
Diaz-Bridges, 208NJ544 - "I don't want to talk about it" and "I can't do this, I just want to go home" = not invocations (but police clarified and gave D breaks)
Bey, 112NJ123 – request to lie down and think about what happened = not an invocation
Baylor, 423NJSuper578 – D's statement that he could not name shooter b/c of his gang affiliation = not an invocation
Kuscinski, 227NJ603 – D's refusal to answer only certain questions = not an invocation
Hulse, 2023WL2439551 (unpub'd) - Post-M Q: "anytime I want a lawyer, I can get a lawyer?" A: "100%" = not an invocation

Attorney:

Edwards v. AZ, 451US477 - Police may not reinitiate interrog w/ D, after D invokes right to an atty, unless atty is present (or there is a break in custody)
Chew, 150NJ30 – once D req's atty, interrog must stop until atty is provided or D reinitiates communication with police
Wessells, 209NJ395 - Police may reinitiate interrog w/ a released D after D req's an atty if there is a break in custody of at least 14 days to permit D to consult an atty.
Faucette, 439NJSuper241 – Wessells 14 day rule only applies to requests for an atty, not when D invokes right to silence.
MD v. Shatzer, 130Sct1213 – Prison inmate's return to general population for 14 days after interrogation constitutes a "break in Miranda custody" permitting ofcs to reinitiate interrogation.
Wint, 236NJ174 – return to general population for pretrial detainees (as opposed to inmates serving a sentence) does not constitute a "break in custody" permitting interrogation.
Fussell, 174NJSup14 – "I want to wait for atty aft talking; I want him to read statement before I answer" = invocation
Wright, 97NJ113 – refusal to take polygraph and "I won't sign any more deeds or waivers w/o an atty" = invocation
Elmore, 205NJSup373 – D's statement to mom (in police presence) that she was not allowed to have an atty = invocation
A.S., 409 NJSuper99 – 14 y/o D "did not know" if she wanted to speak w/ police, reluctance, long periods of silence & mom telling D to talk = ambiguous invocation req'g clarification
Smith v. Illinois, 469US91 – "She told me to get a lawyer" and "I'd like to do that [rt to a lawyer]," "yeah & no" when asked if he wanted to talk to an atty = invocation
Gonzalez, 249NJ612 - "but what do I do about an atty and everything?" = ambig invocation; Answer "that is your decision I can't give you an opinion" is not sufficient clarification
Wade, 252NJ209 - "I got a lawyer. I don't - yeah. Let me talk to him" = invocation; interrogation must cease and statements obtained after continued questioning must be suppressed
Clark, 251NJ266 – "charge me, call my attorney Mr. Keisler, charge me and let's go" = invocation
Perez, 334NJSup296 - Filling out req for PD form is not an invocation of rt. to counsel
Gerald, 113NJ40 D "would [talk]" but no taped statement w/o an atty present = not an invocation to the interview, was a limited invocation to taped statement
McKnight, 52NJ36 – no invocation where D agreed to talk, then refused to sign statement w/o atty reviewing it; Ct found waiver was vol, knowing & intelligent
Messino 378NJSuper559 – "Do you think I need a lawyer" is not an invocation; "maybe I should have an atty" & "I had better talk to a lawyer" are invocations
Alston 204NJ614 - "Should I not have a lawyer?" & "If I want a lawyer, how would I be able to get one?" = not invocations but req's for advice; statement admss
Cardona, 268NJSup38 – Q: Do you want to call atty? A: "no, for what? No, with what money, I have no money" = not an invocation
Boretsky, 186NJ271 – Police can ignore req for atty if their questions are to assist them in emergency situation
Mazzarisi, 440NJSup433 – 6th Am not violated when police intentionally surreptitiously record D speak w/ his atty at PD, but no confidential defense strategy was discussed; any W's involved must be excluded and any evid obtained therefrom must be excluded from the trial, but the indictment need not be dismissed. (See also Sugar, 84NJ1 & 100NJ214).

Misc.

NJ State Const. right to counsel (Art. 1, ¶ 10) triggers upon filing of criminal complaint, before first appearance.

RPC 4.2 – atty cannot speak w/ represented D about subject of rep – attaches at arrest, filing of complaint, or indictment; can talk about other crimes (Bisaccia, 319NJSup1); also, statements obtained in viol of RPC need not be suppressed (McCoy, 261NJSup202; Porter, 210NJSup383).

6th Am rt to atty is offense/incident specific (D may be ques'd about other crimes); 5th Am rt to atty is not (aft D requests atty, police can't initiate interrog about any crime)

Baum, 199NJ407 – A D lacks standing to, and cannot, assert that a 3rd party's Miranda / 5th Am. rights were violated by police (which led to evid against D).

Hager, 462NJSup377 - as long as statement is voluntary, remedy for a M viol is only suppression of D's statement, NOT evid seized as a result of the statement (i.e., fruits of a vol. but unwarned statement, are admiss)

Bell, 388NJSuper629 – D's statement admiss where police have valid arrest W for D, but unlawfully arrest him by illegally entering a 3P's house w/o a search warrant.

Worlock, 117NJ596 – Confession flowing from illegal arrest not automatically suppressed: Ct must determine "attenuation." Factors: (1) M warnings; (2) time b/t arrest and conf;

(3) intervening circumstances; (4) purpose and flagrancy of police misconduct. See also J.A., 233NJ432 (3P brings contraband out of house to police after unlawful police entry).