

Simulated Exam #3
Case Law & Attorney General Guidelines/Directives
Answer Key

1. D – Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978)
 - “No Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” In this respect, “when the Fourth Amendment demands a factual showing sufficient to comprise “probable cause,” the obvious assumption is that there will be a truthful showing.”
 - This does not mean “truthful” in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant’s own knowledge that sometimes must be garnered hastily. But surely it is to be “truthful” in the sense that the information put forth is believed or appropriately accepted by the affiant as true.
2. B – Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978)
 - An evidentiary hearing on the sufficiency or integrity of the affidavit will only be permitted when:
 1. The defendant presents “allegations of deliberate falsehood or of reckless disregard for the truth,”
 2. Those allegations are “accompanied by an offer of proof,”
 3. The allegations “point out specifically the portion of the warrant affidavit that is claimed to be false,” and
 4. The allegations are “accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained.”
 - Significantly, mere “allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted by this case is only that of the affiant, not of any nongovernmental informant.”
 - Accordingly, if the above “requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. Also see State v. Goldberg, 214 N.J. Super. 401 (App. Div. 1986)
 - On the other hand, if the remaining content is insufficient, the defendant is entitled, under the Fourth and Fourteenth Amendment, to his hearing.
3. A – State v. Chaney, 318 N.J. Super. 217, 221 (App. Div. 1999) United States v. Karo, 468 U.S. 705, 719-21, 104 S. Ct. 3296, 3305-06 (1984); Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978); State v. Hunt, 91 N.J. 338, 349-50 (1982)

- These decisions are based on the “independent source” doctrine, “under which ‘evidence that was in fact discovered lawfully, and not as a direct or indirect result of illegal activity, is admissible.’” The goal is to ensure that the government does not profit by its wrongdoing, and, at the same time, to avoid placing it “‘in a worse position than it would otherwise have occupied’ had the misconduct not occurred.”
4. C – State v. Daniels, 46 N.J. 428, 430, 431-32, 217 A.2d 610 (1966) Also see State v. Bisaccia, 58 N.J. 586, 592 (1972);
 - The Court did not limit the "reasonable effort" to an examination of the face of the warrant alone. It would make sense to permit the officer to look at the affidavit in the official court file to resolve an ambiguity which appears when the warrant is sought to be applied to the physical scene. Here the officer was the affiant on whose affidavit the warrant had issued. He knew the judge who issued the warrant intended the building he had amply described in his affidavit. We see no threat to Fourth Amendment values in these circumstances.
 5. C –Attorney General Law Enforcement Directive 2016-7 – Immediate Notification of Investigative Tips and Leads – 2. Rule on Immediate Reporting and the Compilation and Dissemination of SARs
 - CTWatch shall, in turn, immediately review the received information, enter it into “NJSARS,” and, where appropriate, share the information with federal and state partners.
 6. B – State v. Cataldo, 294 N.J. Super. 527 (Law Div. 1996)
 7. B – Attorney General Law Enforcement Directive 2017-1 – Prevention of Victim and Witness Intimidation – 2. Statewide Action Plan: Strategies to Prevent and Respond to Victim and Witness Intimidation – b. Police Response to Witness Intimidation and Notice to Prosecutors
 8. B – State v. Sheehan, 217 N.J. Super. 20 (App. Div. 1987)
 - Using a “commonsense, nontechnical and positive approach,” this court is “satisfied that the facts set forth in the affidavit, as supplemented by the evidence presented at the suppression hearing, established probable cause to search the entire premises. In reaching this conclusion, the court recognizes that “the Fourth Amendment categorically prohibits the issuance of any warrant which does not ‘particularly’ describe ‘the place to be searched and the persons or things to be seized.’ Moreover, the Amendment has been interpreted to require that the scope of the search be defined by the object of the investigation and the places in which there is probable cause to believe that it may be found.”
 - “In the context of a multiple-unit building, the particularity requirement mandates that the warrant describe the specific subunit to be searched. * * * A warrant which authorizes the search of an entire building when cause is shown for searching only one apartment is overly broad and invalid.” One exception to this rule covers those circumstances “where the multiple-unit character of

any premises is not known or is not reasonably apparent to the officer applying for and executing the warrant. See *State v. Wright*, 61 N.J. 146, 149 (1972); *State v. Shumann*, 156 N.J. Super. 563, 566-67 (App. Div. 1978)”

- Another exception, more relevant to the facts of this case, is the “multiple-occupancy or community living exception.” This “exception is said to apply ‘where several persons or families occupy the premises in common rather than individually, as where they share common living quarters but have separate bedrooms.’ Stated somewhat differently, ‘a multiple-occupancy structure is not automatically a multiple-unit structure.’ The ‘essential ingredient’ regarding the specificity requirement for search warrants in this context ‘relates not to the number of occupants but to the existence of separate units or subunits within a structure.’ The mere fact that a structure contains several residents who are not related to one another ‘does not automatically convert its rooms into (separate and private) “subunits”.’” As a result, “in the community living or multiple-occupancy situation, a ‘warrant describing the entire (dwelling unit) so occupied is valid and will justify a search of the entire premises.’”
- “The multiple-occupancy rule is predicated upon the thesis that occupants of a single living unit, whether related or not, generally have at least some access to each other’s bedrooms. Each resident’s reasonable expectation of privacy is thereby diminished. For example, if three persons share an apartment, using a living room, kitchen, bath and hall in common but holding separate bedrooms which are not locked, whichever one of the three is responsible for the described items being in the apartment could have concealed those items anywhere within, including the bedrooms of his cotenants.”
- Accordingly, “under the facts of this case it was not unreasonable for the police to expect to find evidence of criminality in bedrooms other than that occupied by Till.” In this respect, the court emphasizes “that the residence here clearly was not an apartment, boarding house, or any other type of separately divided or partitioned multiple-unit building.”
- It is undisputed that the occupants shared the kitchen, living room, bathrooms, and all other common areas. Although each had his or her own bedroom, none of these was an independent living unit, separately locked, or otherwise identifiable as a private space. At the time of the detective’s entry, the door of each bedroom was open, and each occupant had complete access to the entire house. There was no indication that defendant had sole and exclusive control over his bedroom.
- Consequently, “the warrant authorizing the search of the entire premises was not overly broad and it was not incumbent upon the police to terminate their search upon finding drugs in Till’s bedroom.”

9. D – *State v. Bey*, 112 N.J. 123, 134 (1988)

10. A – *State v. Miller*, 76 N.J. 392 (1978)

- The Court found the defendant’s ensuing confession admissible, noting that the questioning session lasted for only about an hour, defendant was an adult, 32 years old, and had a prior conviction. The Court stated defendant “was in no way deluded or misled into believing that the state trooper was acting in any capacity other than as an interrogating police officer in the investigation of a serious crime.
11. C –State v. Galloway, 133 N.J. 631 (1993)
- The fact that defendant was distressed and emotional is not by itself sufficient to render his confession involuntary.
12. A –State v. Patton, 362 N.J. Super. 16 (App. Div. 2003)
- The Court has never previously condoned police fabrication of tangible evidence nor have they permitted such evidence to be introduced at trial in the past.
 - The police conduct in this case was so inappropriate that it cannot be tolerated or withstand scrutiny under any constitutional or common-law principles. Certain interrogation techniques are so inappropriate that the use of the technique renders the confession per se inadmissible.
 - Also see State v. Chirokovskic, 373 N.J. Super. 125 (App. Div. 2004)
13. C –State v. Pillar, 359 N.J. Super. 249 (App. Div. 2003)
- There are two bases upon which such an agreement renders the resulting statement inadmissible. First, such a misrepresentation directly contradicts and thereby neutralizes the entire purpose of the *Miranda* warnings. Second, such misrepresentation, may, and in this case did, render the statement involuntary.
 - First, a defendant’s request to speak “off-the-record” cannot constitute a knowing and intelligent waiver of *Miranda* rights, specifically the advice that anything a suspect says can be used against him in a court of law. Indeed, defendant’s request revealed a marked lack of understanding of the *Miranda* warnings. The officer then contributed to defendant’s lack of understanding by agreeing to the request rather than informing defendant there could be no such thing as an “off-the-record” discussion.
 - According to the court, a police officer cannot directly contradict, out of one side of his mouth, the *Miranda* warnings just given out of the other. An acquiescence to hear an ‘off-the-record’ statement from a suspect, which the officer ought to know cannot be “off-the-record,” totally undermines and eviscerates the *Miranda* warnings, at least with respect to a statement made, as here, in immediate and direct response to the misleading assurance. Even if the officer did not know what defendant meant by “off-the-record,” it was “the officer’s obligation to clarify what the statement did mean. The second basis upon which the court concluded that the statement was not admissible relates to “voluntariness.” The incriminating statement given by defendant was “in specific and immediate response to the officer’s assurance that defendant could speak off-the-record. If defendant believed that his statement could not be used

against him, despite the earlier *Miranda* warnings, his statement made as a result of that false assurance could not be a free and voluntary one. Stated differently, the improper promise actually induced the incriminating statement. Because defendant's statement was in direct and immediate response to the officer's incorrect representation that he could speak "off-the-record," his statement was involuntary.

- See also *State v. Fletcher*, 380 N.J. Super. 80, 92 (App. Div. 2005)
- 14.C – I. *United States v. Fraction*, 795 F.2d 12, 15 (3rd Cir. 1986)
- The Court found no causal connection between the FBI agent's promise to bring the suspect's cooperation to the authorities' attention and the suspect's decision to confess, the court noted that the circuit courts of appeal have uniformly rejected the contention that a promise to bring a suspect's cooperation to the attention of the authorities suffices to render a confession involuntary.
- II. *State v. Miller*, 76 N.J. 392, 405 (1978)
- III. *State v. Roach*, 146 N.J. 208 (1996)
- IV. *State v. Watford*, 261 N.J. Super. 151 (App. Div. 1992)
- Holding the confession invalid as a matter of State law, the court declared: This case involves neither a discussion about what the prosecutor would recommend, by way of sentence or otherwise, to a judge incident to a plea, or how the prosecutor would exercise his own jurisdiction in the filing of charges, if defendant cooperated in the investigation. Rather, this case involves a statement made on the basis of a promise of a specific sentence which the prosecutor could not guarantee. Given the Judiciary's responsibility for sentencing and our State's firm policy concerning the impact of a sentence recommendation by the prosecutor, we adopt a 'bright line' approach to the admissibility against a defendant of a statement made in exchange for a sentence recommendation by the prosecutor, and hold such statements inadmissible in the absence of counsel on an indictable charge.
 - Thus, as a matter of State law, "an uncounseled statement made incident to, or in exchange for, a sentence recommendation or sentence promise by the prosecutor to the defendant on an indictable offense, is inadmissible.
- 15.B – *State v. J.G.*, 261 N.J. Super. 409, 414 (App. Div. 1993)
- The trial judge placed emphasis on the fact that the detective's promise to release defendant was based upon his assumption that defendant would provide an exculpatory account. The trial judge concluded that the promise was not the determinative factor motivating the defendant to give the statements, and that his confession was the product of his free and independent decision.

- 16.B – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 6. Investigations of Internal Complaints – 6.1. Time Limitations – 6.1.2.
- 17.A – Attorney General’s Law Enforcement Directive 2019-3 – Law Enforcement Interactions with Transgender Individuals – II. Interactions Based on Gender – B. Transportation – 1.
- 18.D –State v. L.H., 239 N.J. 22, 27 (2019)
- 19.C –State v. Vincenty, 237 N.J. 122, 134 (2019)
- 20.D –State v. Tillery, 238 N.J. 293 (2019)
- According to the Court, the *Miranda* card used by the police in this case did not reflect optimal law-enforcement practice. While the card accurately recited the suspect’s *Miranda* rights, it did not properly guide the interrogating officer to ensure that the suspect had waived those rights before questioning began. Instead, the card ambiguously stated that by signing, the suspect acknowledged that he or she had been advised of the constitutional rights found on the reverse side of this card.’ In short, the *Miranda* card used in this case invited an incomplete inquiry on the question of waiver.
 - Consistent with New Jersey law on the right against self-incrimination, the Court instructed: *Miranda* cards and other written forms used by law enforcement in New Jersey should direct the interrogating officer to address the question of waiver in the *Miranda* inquiry. *Miranda* waiver cards and forms should guide an officer to ask whether the suspect understands his or her rights, and whether, understanding those rights, he or she is willing to answer questions. We request that the Attorney General review examples of *Miranda* waiver cards and forms in use by law-enforcement agencies in New Jersey and make recommendations as to best practices on this issue.
 - The Court also determined that the advice the detective gave defendant “as to the purpose of his signature on the *Miranda* card was incomplete. Perhaps misled by the language of the *Miranda* card, the detective told defendant that by signing the card, he would simply acknowledge that his *Miranda* rights had been read to him. He urged defendant to “just sign here that I read you your rights.” To the contrary, a defendant’s signature on a *Miranda* card does much more than acknowledge that law enforcement has recited the *Miranda* rights. When law enforcement officers request that a suspect sign a *Miranda* card or form, they should scrupulously avoid making comments that minimize the significance of the suspect’s signature on that card or form.
- 21.D –State v. Warmbrun, 277 N.J. Super. 51, 61 (App. Div. 1994); State v. Faucette, 439 N.J. Super. 241, 262 (App. Div. 2015)
- 22.B – Attorney General’s Law Enforcement Guideline – Bias Incident Investigation Standards – Section 4. Requirement to Report All Bias Incidents
- 23.D –State v. Hartley, 103 N.J. 252 (1986)
- The federal authorities’ failure scrupulously to honor defendant’s announced intention not to make a statement requires the exclusion, on the State’s case,

- not only of defendant's confession to agents of the FBI, but also of defendant's second statement, made to state and municipal authorities. The result is mandated because the FBI agent's failure to re-administer *Miranda* warnings was a violation of the obligation scrupulously to honor Hartley's asserted right to silence, and therefore amounted to a violation of his fifth amendment and state common-law right not to be compelled to be a witness against himself.
- Since the second (State) statement came as it did on the heels of—if not in tandem with—the first, unconstitutionally-obtained, compelled statement, it was unavoidably tainted, and even the most generous reading of the record cannot generate a conclusion of sufficient attenuation between the first and second interrogations to dissipate the taint.
 - In sum, the Court held that (1) failure to re-administer *Miranda* warnings before interrogating an accused who has previously invoked the right to silence will invariably result in a finding that the right has not been 'scrupulously honored'; and (2) any statement thus obtained is unconstitutionally compelled, and hence inadmissible, as having been obtained in violation of the fifth amendment and of the state common-law right against self-incrimination. This latter rationale means that the suppression of the statement in this case by the New Jersey Supreme Court may continue to be a stricter interpretation than Federal or other States' guidelines and must be made known to cooperating agencies working with New Jersey law enforcement personnel in the course of investigations which may result in prosecutions in New Jersey courts.

24. C – State v. Timmendeuas, 161 N.J. 515 (1999)

25. B – State in Interest of J.F., 286 N.J. Super. 89, 96-97 (App. Div. 1995)

- The court held that, although J.F.'s guardian was denied a meaningful role or participation during his interrogation (because of the language barrier), the questioning was conducted with fairness to the juvenile and without undue pressure or coercion. The court said:
- This was not a lengthy, drawn-out custodial interrogation engaged in under circumstances smacking of coercion and psychological pressures. Picked up at 3:45 p.m., J.F. gave a statement about one-and-a-half hours later at the fire headquarters. While Maria may not have been able to comprehend the questions asked J.F. and his answers, her presence alone may have provided some source of support for J.F., as well as a form of protective buffer from overbearing police procedures. She may not have been able to understand the words, but certainly she could have observed the tone and demeanor during the questioning and would, thereby, have been alerted to the possibility of oppressive or coercive tactics employed.
- We are not insensitive to the role of a parent or guardian during the interrogation of a juvenile. But we are hesitant to conclude that where, as here, that role cannot be fully effectuated, a juvenile's confession is per se inadmissible. Indeed, we have previously held that where parents or a guardian cannot or will not appear, the questioning may go forward provided that it is

conducted with the utmost fairness, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process and fundamental fairness.

26. C – State v. Presha, 163 N.J. 304 (2000)

27. A – Fields v. City of Philadelphia, 862 F.3d 353 (3rd Cir. 2017)

- The First Amendment protects actual photos, videos, and recordings, * * * and for this protection to have meaning, the Amendment must also protect the act of creating that material. There is no practical difference between allowing police to prevent people from taking recordings and actually banning the possession or distribution of them.
- Clearly, not all recording is protected or desirable. The right to record police is not absolute. It is subject to reasonable time, place, and manner restrictions. But in public places these restrictions are restrained. If a person's recording interferes with police activity, that activity might not be protected. For instance, recording a police conversation with a confidential informant may interfere with an investigation and put a life at stake.

28. B – State In Interest of J.D.H., 171 N.J. 475 (2002)

- Finding the actions of the detective entirely proper, the Court preliminarily rejected the Appellate Division's opinion that J.D.H.'s incriminating statements were improperly obtained because of the absence of parental consent or involvement. According to the New Jersey Supreme Court, J.D.H.'s incriminatory statements were not the product of a custodial interrogation. The Court said: We are satisfied that the record before us contains none of the indicia of custody. C.D. placed the telephone call to J.D.H.'s home, and J.D.H. was free to terminate the conversation at any time. Similarly, no one deprived J.D.H. of his freedom of action. As far as J.D.H. was concerned, he merely was conversing with C.D. on the telephone in the familiar surroundings of his own home. Under those circumstances, J.D.H. was not in custody for purposes of *Miranda*.
- Moreover, the Court determined that the ruling in State v. Presha does not require a different result. Presha does not apply to a "non-custodial" context. Rather, the requirements set forth in Presha, are triggered when a juvenile is in police custody facing an interrogation. The Court said: Here, as noted, J.D.H. was in the familiar surroundings of his own home, entirely unaware of the detective's involvement, when he spoke to C.D on the telephone. We are persuaded that the type of pressure inherent in a custodial interrogation, the focus of our concern in Presha, did not exist in the non-custodial setting here. Accordingly, extending the Presha holding to these circumstances is not warranted.

29. C – State v. Vandever, 314 N.J. Super. 124 (App. Div. 1998)

- The tape recording of the interrogation of Vandever, even though not from the beginning of the interrogation, was done by a participant in that interrogation. There is no requirement that a defendant who has properly been given *Miranda*

warnings must also be told that he is or simultaneously may be tape-recorded or video-recorded or both. For example, a suspect who is videotaped by a surveillance camera on a street, in a building, or even from a camera in a police car need not be told he is being so recorded while talking to a police officer in a situation where a *Miranda* warning is required. Moreover, the undisclosed tape-recording of the confession would not violate N.J.S. 2A:156A-1 et seq., the “New Jersey Wiretapping and Electronic Surveillance Control Act,” and indeed is specifically excepted therefrom by subsection 4b. See also 18 U.S.C. §2511(2)(c).

- There was no eavesdropping involved, whether or not the taping was surreptitious, because it was done by a participant. See *United States v. White*, 401 U.S. 745, 91 S. Ct. 1122 (1971) (eavesdropping not involved where government agent was participant and free to testify as to what he heard; tape preserves credibility)
- In a related area that involves actual wiretaps, the recording of a conversation by one who is a party to it has withstood legal challenge. See generally *State v. Parisi*, 181 N.J. Super. 117, 120 (App. Div. 1981) (consensual interception of communication does not violate wiretap statute); *State v. Anepete*, 145 N.J. Super. 22, 25-26 (App. Div. 1976) (party carrying tape-recorder had consented to recording his conversation with defendant).

30.B – *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601 (2004); See also *State v. O’Neill* 193 N.J. 148 (2007)

- Finding such a practice improper, the Court said: By any objective measure, it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content. After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble.
- Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again. What is worse, telling a suspect that “anything you say can and will be used against you,” without expressly excepting the statement just given, could lead to an entirely reasonable inference that what he has just said will be used, with subsequent silence being of no avail. Thus, when *Miranda* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.

- ere, in *Seibert*, the facts “reveal a police strategy adapted to undermine the *Miranda* warnings. The unwarned interrogation was conducted in the station house, and the questioning was systematic, exhaustive, and managed with psychological skill. When the police were finished there was little, if anything, of incriminating potential left unsaid.
- Because the question-first tactic effectively threatens to thwart *Miranda*’s purpose of reducing the risk that a coerced confession would be admitted, and because the facts here do not reasonably support a conclusion that the warnings given could have served their purpose,” the Court held that *Seibert*’s post-warning statements were inadmissible.
- Curative measures should be designed to ensure that a reasonable person in the suspect’s situation would understand the import and effect of the *Miranda* warning and of the *Miranda* waiver.
 - A substantial break in time and circumstances between the pre-warning statement and the *Miranda* warning may suffice in most circumstances, as it allows the accused to distinguish the two contexts and appreciate that the interrogation has taken a new turn.
 - An additional warning that explains the likely inadmissibility of the pre-warning custodial statement may be sufficient.

31. A – *State v. O’Neill* 193 N.J. 148 (2007)

- When *Miranda* warnings are given after a custodial interrogation has already produced incriminating statements, the admissibility of post-warning statements will turn on whether the warnings functioned effectively in providing the defendant the ability to exercise his state law privilege against self-incrimination. In making that determination, courts will consider all relevant factors, including:
 1. the extent of questioning and the nature of any admissions made by defendant before being informed of his *Miranda* rights;
 2. the proximity in time and place between the pre-and post-warning questioning;
 3. whether the same law enforcement officers conducted both the unwarned and warned interrogations;
 4. whether the officers informed defendant that his pre-warning statements could not be used against him; and
 5. the degree to which the post-warning questioning is a continuation of the pre-warning questioning.
- The factual circumstances in each case will determine the appropriate weight to be accorded to any factor or group of factors. Courts will give great weight to factor (4), however, when the police inform a suspect that “his admissions made prior to being given the *Miranda* warnings could not be used against him. Providing that information would strongly suggest that the defendant made any post-warning incriminating statements knowingly, voluntarily, and intelligently.

- If the officers' pre-warning questioning is brief and the defendant's admissions are not incriminating or are barely incriminating and if there is a substantial break in time and circumstances between the pre-and post-warning interrogations, then those factors would militate against suppression of the defendant's statements. Another circumstance that may be considered is the defendant's prior experience with the criminal justice system. In a two-step interrogation case, courts must view the totality of the circumstances in light of the relevant factors and then determine whether the unwarned questioning and admissions rendered the *Miranda* warnings ineffective.

32.D – State v. Bell, 388 N.J. Super. 629 (App.Div. 2006)

- In *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640 (1990), the Supreme Court addressed a case in which the police violated the rule in *Payton v. New York*, by illegally entering the defendant's home in order to effect his arrest for which they had probable cause. Thus, as in this case, the arrest was otherwise legal, although the entry into the house without a proper warrant was unlawful. In *Harris*, the Court declined to suppress defendant's confession: We decline to apply the exclusionary rule in this context because the rule in *Payton* was designed to protect the physical integrity of the home; it was not intended to grant criminal suspects, like *Harris*, protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime. Nothing in the reasoning of that case suggests that an arrest in a home without a warrant but with probable cause somehow renders unlawful continued custody of the suspect once he is removed from the house. There could be no valid claim here that *Harris* was immune from prosecution because his person was the fruit of an illegal arrest. * * * *Harris*' statement taken at the police station was not the product of being in unlawful custody. Neither was it the fruit of having been arrested in the home rather than someplace else.

33.A – State v. Brown, 205 N.J. 133 (2011)

- At the moment *Brown* fled, the police had engaged in no misconduct. They merely knocked on an apartment door and asked if *Brown* was present. The police did not enter the apartment before *Brown* fled onto the roof next door. Thus, there was no seizure of any sort in the apartment.
- Beyond that, *Brown*'s flight created a new reality. By moving to a public place and creating a standoff there, *Brown* transformed the situation from an arrest in a third party's private apartment, where police would need an arrest and search warrant, to the public arena, where the police could arrest him without a warrant based on probable cause that he had committed armed robbery.
- In addition, *Brown*'s conduct in the presence of the police provided an alternative basis to arrest him. After jumping onto a roof, *Brown* created a twenty-minute standoff with the police in a public place, posing a risk to the officers and the public. Because *Brown* resisted arrest in that way, the police had the authority to arrest him without a warrant for resisting.

- Accordingly, because the police had probable cause to arrest Brown in public (1) for armed robbery committed outside their presence, and (2) for his behavior in resisting arrest, which they observed, they did not need an arrest warrant. As a result, the admittedly defective warrants the police possessed—which were tantamount to no warrants at all under the circumstances and rendered this a warrantless arrest—do not affect the outcome here.

34. A – State v. Reed, 133 N.J. 237 (1993)

- Under federal constitutional law, defendant’s confession would be admissible. In Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135 (1986), the United States Supreme Court held that police have no obligation to advise a defendant that a third party had summoned an attorney to advise him.
- Requiring the police to inform the suspect of an attorney’s presence will greatly reduce the temptation, on law enforcement authorities, to pressure the suspect into a confession before the attorney gains access to the suspect.
- In New Jersey: The new rule announced in this case, according to the Court, should be governed by a two-fold purpose:
 1. to enhance the reliability of confessions by reducing the inherent coercion of custodial interrogation and
 2. diminish the likelihood of unreasonable police conduct in those situations where police, knowing that an attorney has been retained for the suspect and is asking for contact with his or her client, are desperate to acquire a confession before the suspect speaks with the attorney.
- When, to the knowledge of law enforcement officers, an attorney has been retained on behalf of a person in custody on suspicion of crime and is present or readily available to assist that person, the communication of that information to the suspect is essential to making a knowing waiver of the privilege against self-incrimination and withholding that information renders invalid the suspect’s waiver of the privilege against self-incrimination.
- Once the presence or ready availability of an attorney is made known to a suspect, he or she may nonetheless wish to waive the right to the attorney’s assistance. As the Court observed in State v. Kennedy, 97 N.J. 278, 288 (1984), the bare fact that defendant had counsel representing him cannot be construed to preclude defendant from effectively waiving his right to remain silent and to have an attorney present.

35. C – Rule 3:17 (Electronic Recordation); State v. Anthony, 443 N.J. Super. 553 (App. Div. 2016)

- Electronic recordation pursuant to paragraph (a) must occur unless:
 - i. a statement made during a custodial interrogation is not recorded because electronic recording of the interrogation is not feasible,
 - ii. a spontaneous statement is made outside the course of an interrogation,
 - iii. a statement is made in response to questioning that is routinely asked during the processing of the arrest of the suspect,

- iv. a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded,
 - v. a statement is made during a custodial interrogation that is conducted out-of-state,
 - vi. a statement is given at a time when the accused is not a suspect for the crime to which that statement relates while the accused is being interrogated for a different crime that does not require recordation,
 - vii. the interrogation during which the statement is given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions is applicable.
- The failure to electronically record a defendant’s custodial interrogation in a place of detention shall be a factor for consideration by the trial court in determining the admissibility of a statement, and by the jury in determining whether the statement was made, and if so, what weight, if any, to give to the statement.
 - Directives 2006-2 and 2006-4, issued by the New Jersey Attorney General, require the electronic recording of “the entirety of all custodial interrogations occurring in a place of detention.” Broader than the dictates of R. 3:17, the Attorney General’s recording requirement applies to “all first-, second- and third-degree crimes,” for adult and juvenile suspects alike. Although not mentioned by either Directive, compliance with R. 3:17(a) mandates that the recording requirement also extend to the fourth-degree crime of criminal sexual contact.
 - Law enforcement officials must record custodial interrogations of those who are suspected of committing, and will be questioned about, any crime listed in subsection (a) of the Rule. This interpretation is supported by other provisions in the Rule. For example, subsection (b)(iv) excepts from the recordation requirements statements made by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded.
36. C –Manson v. Brathwaite, 432 U.S. 98, 114, 97 S. Ct. 2243, 2253 (1977); State v. Madison, 109 N.J. 223, 232-33 (1988); Neil v. Biggers, 409 U.S. 188, 198, 93 S. Ct. 375, 381 (1972); State v. Henderson, 208 N.J. 208, 238 (2011)
37. A – State v. Henderson, 208 N.J. 208 (2011)
38. B – State v. Henderson, 208 N.J. 208 (2011)
39. D – State v. Henderson, 208 N.J. 208 (2011)
40. B – State v. Henderson, 208 N.J. 208 (2011)
41. B – State v. Henderson, 208 N.J. 208 (2011)
42. A – State v. Henderson, 208 N.J. 208 (2011)

43. B – State v. Henderson, 208 N.J. 208 (2011)

44. B – State v. Henderson, 208 N.J. 208 (2011)

45. B – State v. Janowski, 375 N.J. Super. 1 (App. Div. 2005); State v. Joseph, 426 N.J. Super. 204, 223 (App Div. 2012); State v. Green, 239 N.J. 88 (2019)

- Detective Montez testified that he had no idea who the suspect might be prior to showing the victim the picture link system. In prior use, Detective Montez testified that the system could display anywhere from 100 to over a thousand photographs.
- Given that the computer system here contained large numbers of randomly selected photographs, kept for the purpose of investigation, not confirmation, and is a resource “shown to witnesses as a matter of course to see if a suspect can be found, we conclude that it is essentially a mug shot book and the failure to retain all of the photos seen by the victim is not fatal to the admission of the out-of-court identification.

In Green, the problem was that after the detective entered the various parameters in the HIDTA system based on the description of the assailant, which was done in investigative mode, the detective allowed the witness to view the computer monitor but forgot to switch the system to “witness mode.” The witness was able to scroll through pages of photos, with six on a screen at a time, and was asked to announce if she saw her assailant or anyone who looked similar. In this regard, the Court paused to note: Witnesses should not examine photos in investigative mode for a number of reasons. That mode allows eyewitnesses to access details that witnesses should not see, like a defendant’s name and the date and place of arrest. It repeats individual photos when an array is created. And it cannot generate a report of what an eyewitness viewed. By contrast, witness mode limits access to potentially suggestive information; allows witnesses to examine suitable and narrowed fields of photos; and enables administrators to keep a record of the session.

- A significant problem in this case relates to the issue of multiple viewings of the same person during an identification procedure. Mug books are made up of arrest photos, and if an individual has been arrested more than once, multiple photos of the person will appear in both a paper mug book and a digital database. Multiple views of the same person can create a risk of mugshot exposure—the possibility that a witness will make an identification based on a memory of an earlier photo and not the original event.
- In this case, the Court agreed with the trial court that the identification procedure must be suppressed, in light of “the witness’s use of investigative mode during the identification process, the failure to preserve all but one photo, and defendant’s history of multiple recent arrests in Newark, which would have been captured in the HIDTA system the witness viewed.

46. C – State v. Herrera, 187 N.J. 493 (2006)

- In this appeal, defendant asked the Court to adopt a new standard for determining the admissibility of showup identification evidence. According to defendant, because showup identifications are by their nature suggestive and more likely to yield false identifications compared to properly conducted lineups and photo arrays, they should be admissible only when the showup is necessary. That is, showup identification evidence should be admitted only if exigent circumstances that require immediate identification are present. In this case, the Court declined to adopt a new standard under our state constitution.
 - The Court concluded that, in combination with the suggestiveness inherent in a showup, the added comments by the police rendered the showup procedures in the out-of-court identification of defendant impermissibly suggestive. Those comments made by the police to the victim were inappropriate because they may have influenced the victim to develop a firmer resolve to identify someone he might otherwise have been uncertain was the culprit. Those comments were also in violation of the New Jersey Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, which direct the police to avoid saying anything to the witness that may influence the witness' selection.
 - The Court was satisfied that the identification procedure was reliable and did not result in a substantial likelihood of misidentification. In particular, the evidence that Valentin had seen defendant on a daily basis in the month prior to the incident is strong evidence in support of reliability of Valentin's identification of defendant.
 - Based on the totality of the circumstances, the Court concluded that the admission of Valentin's out-of-court identification of defendant was proper.
47. D –U.S. v. Wade, 388 U.S. 218, 87 S. Ct. 1926 (1967); State v. Cherry, 289 N.J. Super. 503, 517 (App. Div. 1995); State v. Rodriguez, 264 N.J. Super. 261, 269 (App. Div. 1993), aff'd o.b. 135 N.J. 3 (1994); State v. Santoro, 229 N.J. Super. 501, 504 (App.Div. 1988)
- . . . whether the identification was prompted by the eyewitness's own recollection of the crime or by the suggestive manner in which the identification procedure was conducted.
48. D – State v. Cribb, 281 N.J. Super. 156, 160 (App.Div. 1995); State v. Taplin, 230 N.J. Super. 95, 99-100 (App. Div. 1988); State v. Porambo, 226 N.J. Super. 416, 425-26 (App. Div. 1988); State v. Ridout, 299 N.J. Super. 233, 241 (App. Div. 1997); State v. Johnson, 421 N.J. Super. 511, 520 (App. Div. 2011); State v. Branch, 182 N.J. 338 (2005); State v. Lazo, 209 N. J. 9 (2012)
- At trial, it is improper for a witness to refer to the photo array as a group of "mug shots," or accentuate the fact that the defendant's photograph is a mug shot. "Identification of photos of a defendant as mug shots has resulted in reversal of convictions on appeal because they imply that the defendant has a criminal history."

- In Taplin, the identification was not contested, it was reversible error to admit a photo of defendant which unmistakably was a “mug shot”.
- Even a mere fleeting reference to a mug shot by a witness would require the trial court to give the jury a curative instruction.
- In Ridout, at trial there should be no gratuitous references to mug shots.
- In Johnson, it was wholly improper for the officer to state that he obtained defendant’s picture for the photo array from a “Mug Master” database.
- Where identification is at issue, mug shots may be admissible. But they must be presented in as neutral a form as possible.
- Testifying officers should, therefore, refrain from characterizing photo arrays as “mug shots,” “mug books,” photographs from a “police file,” photographs from “our gallery,” or any other type of reference that would reasonably suggest to a jury that the photographs were obtained as a result of the defendant’s prior criminal activity.
- In Cribb, defendant’s photo was not presented in a neutral format. There was no legitimate need to tell the jury that the police considered defendant to be the only suspect in the photo array or to imply defendant’s notoriety with the police. Testimony that refers to these arrays merely as “photographs” has been consistently interpreted as neutral and upheld as proper.
- In Branch, the Court held that it was improper for the police detective to testify that he included defendant’s picture in a photographic array because he had developed defendant as a suspect “based on information received.” According to the Court, the detective’s testimony was inadmissible hearsay that violated defendant’s right of confrontation. The detective’s testimony led the jury to believe that he had received information making defendant a suspect in the crime before the victims viewed the photo array. “Thus, the jury was left to speculate that the detective had superior knowledge through hearsay information implicating defendant in the crime. Because the nameless person who provided the information to the detective was not called as a witness, the jury never learned the basis of that person’s knowledge regarding defendant’s guilt, whether he was a credible source, or whether he had a peculiar interest in the case. When the logical implication to be drawn from the testimony leads the jury to believe that a non-testifying witness has given the police evidence of an accused’s guilt, the testimony should be disallowed. A police officer may not imply to the jury that he possesses superior knowledge, outside the record, that incriminates the defendant. When a police officer testifies concerning an identification made by a witness, such as in this case, what counts is whether the officer fairly arranged and displayed the photographic array and whether the witness made a reliable identification. Why the officer placed the defendant’s photograph in the array is of no relevance to the identification process and is highly prejudicial. For that reason, the Court disapproved of a police officer testifying that he placed a defendant’s picture in a photographic

array upon information received. Even such seemingly neutral language, by inference, has the capacity to sweep in inadmissible hearsay. It implies that the police officer has information suggestive of the defendant's guilt from some unknown source. In contexts other than a photographic identification, the phrase 'based on information received' may be used by police officers to explain their actions, but only if necessary to rebut a suggestion that they acted arbitrarily and only if the use of that phrase does not create an inference that the defendant has been implicated in a crime by some unknown person. The exception would be the defendant who opens the door by flagrantly and falsely suggesting that a police officer acted arbitrarily or with ill motive. In such a circumstance, the officer might be permitted to dispel that false impression, despite the invited prejudice the defendant would suffer.

- In *Johnson*, the jury charge and the prosecutor's summation violated *Branch* because they implied that the State had additional information about defendant's guilt from an undisclosed source. According to the court, it made no difference that this inference was created by the prosecutor and the court, rather than a police officer's testimony.
- In *Lazo*, the Court similarly held that it was improper for a police officer to testify at trial about how and why he assembled a photo array. Although the officer had no personal knowledge of the crime committed, he told the jury that he believed defendant closely resembled a composite sketch of the assailant and therefore he included a photo of defendant in the array. The officer showed the array to the robbery victim, whose eyewitness identification was the only evidence linking defendant to the offense. The officer's testimony, held the Court, should not have been admitted in light of the principles outlined in *State v. Branch*. The testimony improperly bolstered the victim's account and invaded the role of the jury to weigh the victim's credibility.

49. C – *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982); *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 815 (2009); *Schneider v. Simonini*, 163 N.J. 336, 354 (2000); *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806 (1985); *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S. Ct. 534, 536 (1991)

- Qualified immunity, also referred to as "executive or good faith immunity," is generally raised by a law enforcement official in defense of a suit brought by a plaintiff under 42 U.S.C. §1983, alleging a constitutional or statutory violation. In pertinent part, Section 1983 provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State subjects, or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
- Although generally referred to as a "defense," qualified immunity is more accurately viewed as an immunity from suit which is effectively lost if a case is

erroneously permitted to go to trial. As a result, courts stress that the resolution of immunity issues should occur at the earliest possible stage in litigation. In fact, it is improper for a court to routinely submit the issue of qualified immunity to a jury. Immunity ordinarily should be decided by the court long before trial, with the trial judge using the “summary judgment standard.”

50. B – Wildoner v. Borough of Ramsey, 162 N.J. 375 (2000)

- The specific issue addressed by the Court in this appeal was whether the officers, acting on a concerned citizen’s report, supported by the officers’ analysis of the totality of the circumstances, acted reasonably when they arrested an alleged perpetrator even though the victim and the alleged perpetrator denied that an act of domestic violence occurred.
- The posture of the case is a civil lawsuit by Arthur Wildoner against the Borough of Ramsey, the Ramsey Police Department, and the officers, for false arrest, false imprisonment, mistreatment and malicious prosecution, in violation of his federal constitutional and state common-law rights.
- Under the New Jersey Tort Claims Act, an officer will not be liable if he acts in good faith in the execution or enforcement of any law. N.J.S. 59:3-3. In this regard, the Court explained that the “same standard of objective reasonableness that applies in Section 1983 actions also governs questions of good faith arising under the Tort Claims Act.
- In addition to the good-faith immunity provided by the Tort Claims Act, police officers are also shielded by the specific immunity provided under N.J.S. 2C:25-22 of the Domestic Violence Act. Under the Domestic Violence Act, an officer is empowered to arrest an alleged perpetrator, even when the victim does not corroborate the incident, provided that the officer has probable cause to believe the incident occurred. To ensure protection for law enforcement officers, the Legislature enacted 2C:25-22, which provides: A law enforcement officer who, in good faith, reports a possible incident of domestic violence shall not be held liable in any civil action brought by any party for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission in good faith under this act.
- The officers properly placed substantial reliance on Gannon’s statement. Gannon did not phone in an anonymous tip; rather, she waited at the scene and confirmed her report to police. There was no allegation that Gannon reported the incident out of any motivation other than concern for Mrs. Wildoner’s safety. Moreover, because this arrest occurred ‘in a context where the reactive measures taken are for the limited purpose of neutralizing a dangerous situation,’ the police appropriately relied on the report as a factor in their decision to arrest.

51. A – Attorney General’s Law Enforcement Guideline - Bias Incident Investigation Standards– Section 4. Requirement to Report All Bias Incidents

52. A – Attorney General’s Law Enforcement Guideline - Bias Incident Investigation Standards– Section 4. Requirement to Report All Bias Incidents

- 53. C – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 2.2 Rules and Regulations – 2.2.2
- 54. D – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 2. Fundamentals of the Disciplinary Process – 2.3
Responsibility for Discipline – 2.3.2
- 55. C – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 7 Internal Affairs Investigations Procedures – 7.1.
Interviewing the Complainant and Civilian Witnesses – 7.1.5
- 56. C – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 7 Internal Affairs Investigations Procedures – 7.1.
Interviewing the Complainant and Civilian Witnesses – 7.1.6
- 57. D – Attorney General’s Law Enforcement Guideline – Internal Affairs Policy and Procedures – Section 7 Internal Affairs Investigation Procedures – 7.11.
Investigation of Firearm Discharges – Paragraph 7.11.1
- 58. B – Attorney General Law Enforcement Directive No. 2019-2 – Extreme Risk Protective Order Directive – 3. Filing for an ERPO – 3.1. Who May File for an ERPO
- 59. C – Attorney General Law Enforcement Directive No. 2019-2 – Extreme Risk Protective Order Directive – 3. Filing for an ERPO – 3.4. The Process of Filing for a TERPO by a Family or Household Member.
- 60. A – Attorney General Law Enforcement Directive No. 2019-2 – Extreme Risk Protective Order Directive – 5. When an ERPO Petition is Filed Against A Law Enforcement Officer – 5.1. Venue