

DATE NAME OF CASE (DOCKET NUMBER)

7-30-09 State v. Martin R. Taccetta (A-13-08)

Defendant cannot demonstrate that he suffered prejudice. Even if he had been offered a plea agreement, and regardless of any deficient advice from his attorney about his potential sentencing exposure following a trial, based on his protestation of innocence at the PCR hearing, defendant could not have given a truthful factual basis in entering a guilty plea to the State's purported plea offer. A trial court cannot be complicit in a defendant's plan to commit perjury, and a PCR court cannot vacate a jury verdict following a fair trial on the ground that defendant would have pled guilty if he had been given the opportunity to lie under oath.

7-29-09 State of NJ In the Interest of P.M.P.

The filing of the complaint and the obtaining of a judicially approved arrest warrant by the Camden County Prosecutor's Office was a critical stage in the proceedings, and pursuant to N.J.S.A. 2A:4A-39B(1), P.M.P. had the right to counsel and could not waive that right except in the presence of and after consultation with his attorney counsel. Therefore, the trial court properly granted P.M.P.'s motion to suppress his statement.

7-28-09 State v. Lavar Winder (A-34-08)

In this first-degree murder case, the trial court properly denied defendant's request for a tailoring of the model jury charge on insanity to explain to the jury that a criminally insane person may be capable of comprehending that an act is legally wrong while not understanding it to be morally wrong.

7-27-09 State v. Jose Nunez-Valdez (A-46-08)

There was sufficient credible evidence for the trial court to conclude that defendant was misinformed by counsel and that he would not have pled guilty if he had received accurate information that his plea would result in deportation.

7-23-08 Casey Pellicer, et al. v. St. Barnabas Hospital, et al. (A-88/89/90/91-07)

The jury selection process resulted in a jury panel that could not fairly and dispassionately evaluate the difficult and emotionally-charged issues in this case. In addition, the trial was tainted by cumulative error and concerns about the improprieties that infected this trial call the verdict into question because the historic and extraordinary damage award cannot be separated from those errors.

7-22-09 State v. James Robinson (A-62-08)

Defendant's conviction and sentence are reinstated because, in the circumstances of this case, the delay of twenty- to thirty-seconds between the police officers knocking and announcing their purpose to execute a search warrant and their forcible entry into the apartment was reasonable, and defendant's challenge concerning the officers' use of a "flash bang" device was raised for the first time on appeal and was not appropriate for consideration.

7-21-09 State v. Quinn Marshall (A-33-08)

The search warrant was issued in violation of the constitutional requirement to describe the place to be searched with particularity. Because police were authorized to determine if the conditions in the warrant were satisfied, the role of the neutral, detached magistrate was delegated to the police. The failure to comply with the particularity requirement and the failure to have a neutral and detached magistrate determine whether the conditions in the warrant were satisfied are constitutional violations, not technical insufficiencies justifying overlooking the deficiencies in the warrant.

7-16-09 Sebastian Fernandez v. Nationwide Mutual Fire Insurance Company (A-54-08)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Gilroy's opinion.

7-15-09 Amalgamated Transit Union, Local 880 v. New Jersey Transit Bus Operations, Inc. (A-20-08)

Applying the "reasonably debatable" standard of review for arbitration decisions, the Court defers to the arbitration panel's conclusion that the employee in this case, who was terminated during his probationary period, did not have the right to access the grievance provisions of the collective

bargaining agreement.

7-14-09 State v. Alonzo B. Hill (A-5-08)

Providing a Clawans charge in the circumstances of this case constituted reversible error. The charge, which favored the State on an element of its required proofs, had the inescapable effect of undermining Alonzo Hill's entitlement to benefit from the presumption of innocence and to demand that the State bear the burden of proving, beyond a reasonable doubt, all elements of the charges against him.

7-13-09 State v. Maribel Rolon a/k/a Rodriguez (A-45-08)

For first-degree robbery, if a weapon possessed by a defendant was not a firearm, the defendant cannot be considered to have been armed with a deadly weapon unless he or she had immediate access to the potential weapon and an intent to use it in a way that was capable of producing death or serious bodily injury. Because the judge's jury instruction in this case eliminated the issue of "intent," a proper evaluation of the evidence was precluded and the first-degree robbery conviction must be reversed.

7-9-09 Mohammed Khan, et al. v. Sunil K. Singh, M.D.
(A-73-08)

There was no foundational proof for the plaintiff's experts' testimony that it is common knowledge in the medical community that the injury ordinarily occurs only because of negligence. Although lack of experience alone does not necessarily preclude an expert from offering such an opinion, the experts did not point to any training, education, or medical literature as an alternate source of support for their common knowledge testimony. Even if the Court were to embrace the "conditional res ipsa" theory, application of that charge is not supported by this factual record.

7-8-09 State v. Manuel A. Fajardo-Santos (A-82-08)

Federal authorities exercised their discretion in lodging a detainer against defendant. That increased the risk that he would not appear at trial. The trial judge then properly responded to a change in circumstances by increasing defendant's bail.

7-7-09 State v. Anthony Bogan (A-7-08)

The police officer's warrantless entry into an apartment for the purpose of taking the telephone from an unattended child to speak with his parent was justified by the community caretaking doctrine because the officer had a duty to identify a responsible adult for the child and to ensure his safety. Because the officer was lawfully on the premises when he observed in plain view defendant, who fit the suspect's description, he had a right to direct his fellow officers to question defendant. Defendant's Mirandized statements in response to questioning were properly admitted at trial.

7-2-09 State of New Jersey v. Oscar Osorio (A-59-08)

The Court slightly refines the methodology to be applied in gauging bias claims in the jury selection process, reaffirming that a three-step process must be employed whenever it has been asserted that a party exercised peremptory challenges based on race or ethnicity. Step one requires that, as a threshold matter, a party contesting the exercise of the challenge must make a prima facie showing that the peremptory challenge was exercised on the basis of race or ethnicity, which can be established through sufficient proofs to raise an inference of discrimination. If that burden is met, step two is triggered, and the burden shifts to the party exercising the peremptory challenge to prove a race- or ethnicity-neutral basis supporting the peremptory challenge. The trial court must ascertain whether the explanations are pretext or present a reasoned, neutral basis for the challenge. Once that analysis is completed, the third step is triggered, requiring the trial court to weigh the proofs adduced in step one against those presented in step two and determine whether, by a preponderance of the evidence, the party contesting the exercise of the peremptory challenge has proven that the challenge was exercised on unconstitutionally impermissible grounds of presumed group bias.

7-1-09 Christine Saba Fawzy v. Samih M. Fawzy (A-38/39-08)

The constitutionally protected right of parental autonomy includes the right of parents to choose the forum in which to resolve their disputes over child custody and parenting time, including arbitration. An agreement to arbitrate must be in writing or recorded and must establish that the parties are aware of and have knowingly and voluntarily waived their rights to a judicial determination. A record of documentary evidence adduced during the proceedings must be kept; testimony must be

recorded; and the arbitrator must issue findings of fact and conclusions of law in respect of the award. The arbitrator's award is subject to review under the Arbitration Act, N.J.S.A. 2A:23-B-1 to -32, except that judicial review is also available if a party establishes that the award threatens harm to the child.

6-25-09 New Jersey Shore Builders Association v. Township of Jackson and Builders League of South Jersey v. Egg Harbor Township (A-51/52-08)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Winkelstein's opinion below.

6-24-09 Mount Holly Township Board of Education v. Mount Holly Township Education Association (A-24-08)

The Court reaffirms the principles articulated in Lullo v. International Ass'n of Fire Fighters and Troy v. Rutgers: in general, collective agreements supersede individual contracts. To the extent provisions in an individual employment contract conflict or are inconsistent with terms in a collectively negotiated agreement (CNA), and diminish or interfere with rights provided by the CNA, the language in the individual contract must yield to the CNA. Gonzalez's employment contract conflicted with the CNA and diminished its specific terms by depriving him of the right to arbitration; therefore, on remand, Gonzalez is entitled to a hearing before an arbitrator to address the grievance filed.

6-23-09 Berk Cohen Associates at Rustic Village, LLC v. Borough of Clayton (A-55-08)

A municipal garbage-collection scheme requiring all residents to abide by the same curbside requirements facially adheres to the guarantees of equal protection, but its application in a particular case cannot be so arbitrary as to deny due process of law. Here, the trial court's findings that curbside collection was "unhealthful, unsanitary, utterly inefficient, unsightly and unreasonable," established that the offer of curbside pickup lacked a rational relation to the legislative goal of shielding the public from the hazards associated with accumulating refuse. In this case, the only viable option under N.J.S.A. 40:66-1.3(a) is reimbursing the apartment complex for its trash-removal.

6-22-09 Shore Orthopaedic Group, LLC v. The Equitable Life Assurance Society of the United States (A-4-08)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Stern's opinion below.

6-15-09 State v. Angela Baum and Jermel Moore (A-44-07)

Defendant Jermel Moore's motion to suppress evidence found during a warrantless search of the vehicle in which he was riding should have been denied because he did not have standing to argue that the driver's right against self-incrimination was violated and because the search was not unreasonable.

6-11-09 R.L. v. Kenneth Voytac (A-61-08)

Pursuant to the Child Sexual Abuse Act, a trial court must first determine when a reasonable person subjected to childhood sexual abuse would discover that the defendant's conduct caused him or her injury (an objective test). If that period is more than two years prior to the filing of the complaint, then the court must next determine whether the statute should be tolled because of "the plaintiff's mental state, duress by the defendant, or any other equitable grounds," (a subjective test).

6-10-09 John Bardis and Helen Bardis v. First Trenton Insurance Company (A-110-07)

The Court concludes that there are strong reasons supporting the rule that the Underinsured Motorist (UIM) litigation proceed in the name of the tortfeasor rather than the insurer, that these reasons ordinarily militate in favor of identifying the defendant in the trial by using the name of the tortfeasor, and that the decision to identify the UIM insurer as the defendant instead remains a matter left to the sound discretion of the trial judge should circumstances dictate. The Court further concludes that payment of PIP benefits for treatment of an injury is irrelevant to the question of causation of that injury. In addition, the closing argument by counsel disavowing his and the actual tortfeasor's knowledge about the insurer's employee and her decisions to make PIP payments had the capacity to confuse the jury, and its admission constituted reversible error.

6-3-09 Margaret L. Lee v. First Union National Bank, et al.
(A-58-08)

The sale of securities is not included within the Consumer Fraud Act's definition of "merchandise," and defendants' conduct in

connection with the sale of securities cannot be characterized as a "service" covered by the Consumer Fraud Act (CFA) because that would thwart the statute's design to keep the sale of securities beyond the CFA's application.

5-28-09 Raymond Arthur Abbott, et al. v. Fred G. Burke, Commissioner of Education, et al. (M-969/1372-07)

To the extent that the record permitted its review, the School Funding Reform Act of 2008 (SFRA) is constitutional and may be applied in Abbott districts subject to the State continuing to provide school funding aid during this and the next two years at the levels required by SFRA's formula each year, and subject further to the mandated review and retooling of the formula's weights and other operative parts after three years of implementation.

5-14-09 James LoBiondo, Jr., et al. v. Grace Schwartz, et al. (A-86/87-07)

The common law cause of action for malicious use of process, although disfavored, is a viable response to Strategic Lawsuits Against Public Participation (SLAPP) suits. The required elements of the tort, namely, the filing of a complaint, without probable cause, that was actuated by malice, that terminated in favor of the party now seeking relief, and that caused the party now seeking relief to suffer a special grievance must all be proven but are refined by the Court to meet the circumstances of a SLAPP suit. Thus, one who can demonstrate that his or her right of free speech or to petition was actually infringed will satisfy the special grievance element of the cause of action. Moreover, the advice-of-counsel defense is a viable defense to a SLAPP suit. If and when that defense is asserted, the party seeking relief may also pursue a cause of action against the attorney who was the source of the advice. When the target is the attorney, a separate evaluation of the proof that the original claim was actuated by malice is required, focusing on the motivation of the attorney, with the need to demonstrate that the attorney's primary motive was an improper one.

5-13-09 New Jersey Shore Builders Association v. Township of Jackson (A-83-07)

The Township of Jackson's tree removal ordinance is a valid exercise of police power because the details of the ordinance, including the tree replacement fee, the escrow fund, and the planting of trees and shrubs on public property when replanting

at the original location is not feasible, are rationally related to the broad environmental goals that inform the ordinance.

5-12-09 State v. Steven R. Fortin (A-27-08)

Because defendant had prior notice of the former statute's death penalty procedures, there is no impediment to proceeding to the penalty phase under the former statute. If the jury concludes that the State has proven beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors, rendering defendant subject to a death sentence under the former law, then imposing a life-without-parole sentence under the new law would not violate the Ex Post Facto Clause. If the jury finds in favor of a non-death sentence, defendant must be sentenced under the law as it existed at the time of the offense, to a term of thirty years to life with a thirty-year parole disqualifier.

5-11-09 Charlotte Klumb v. Board of Education of Manalapan-Englishtown Regional High School District, Monmouth County (A-48-08)

Under N.J.S.A. 18A:66-40(a), a school district must return a formerly disabled teacher to the next available opening in the position that he or she held at the time of the disability retirement, so long as the teacher meets the standards set by the State Board of Education for that position, i.e., a valid teaching certificate and endorsements.

5-7-09 Kathleen V. Bauer v. Frederick Nesbitt, III, et al. (A-16-08)

Under the circumstances of this case, neither the common law nor the New Jersey Licensed Alcoholic Beverage Server Fair Liability Act (Dram Shop Act), N.J.S.A. 2A:22A-1 to -7, imposed a duty on the licensed alcoholic beverage server to monitor the appearance of a patron to whom it had not served alcohol.

5-7-09 G.H. v. Township of Galloway (A-64/65-08)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Lisa's written opinion. Cherry Hill Township's and Galloway Township's ordinances, establishing residency restrictions that formed buffer zones for convicted sex offenders living within their communities, are precluded by the present, stark language of Megan's Law.

5-6-09 Circus Liquors, Inc. v. Governing Body of Middletown Township (A-25/53-08)

With the Director's express authority to revoke, or to suspend, alcoholic beverage licenses comes the implied power to control the divestiture of interest in an improperly issued license. It was not arbitrary, capricious, or unreasonable for the Director to apply the remedy of divestiture in this matter to enforce compliance with the two-license limit created by N.J.S.A. 33:1-12.31.

5-5-09 Howard D. Brunson v. Affinity Federal Credit Union (A-60-08)

Because Brunson's arrest and detention were based on probable cause, his claim for malicious prosecution was properly dismissed by the trial court. In the circumstances presented, New Jersey does not recognize a cause of action for negligent investigation as a surrogate for a malicious prosecution claim. When confronted with a plaintiff who fails to appear as a witness, trial courts must first explore less drastic remedies before invoking the ultimate sanction of dismissal.

5-4-09 State v. Terry W. Coder (A-28-08)

In defendant's criminal trial on charges of sexual assault on a minor, the out-of-court statements by the victim - a three-year-old child - as testified to by her mother, were properly admitted because the statements were relevant and admissible under the tender years exception to the hearsay rule. Additionally, because the child's statements were not testimonial, they did not implicate the defendant's Confrontation Clause rights.

5-4-09 Omar Sanders v. Norma K. Langemeier, et al. and New Jersey Property-Liability Insurance Guaranty Association (A-49-08)

The Court's reading of the plain language of the statute creating the Unsatisfied Claim and Judgment Fund (UCJF) benefits and of the statutes governing automobile insurance demonstrates that the Legislature intended that an individual covered by a special automobile insurance ("Dollar-A-Day") policy would not be entitled to secure such further benefits from the UCJF.

4-27-09 Fred Burnett v. County of Bergen, et al. (A-43-08)

Under the circumstances of this case, a balancing of the Open Public Records Act's twin aims of protecting a citizen's personal information and providing ready access to government records requires that Bergen County redact the social security numbers from the land title documents sought by the requestor before providing them. The cost of redaction will be borne by the requestor.

4-16-09 Sopharie Leang, et al. v. Jersey City Board of Education, et al. (A-21/22-08)

The Court reverses the judgment of the Appellate Division to the extent it: reinstated plaintiff's breach of contract and employment claims; reinstated plaintiff's federal claims against the school defendants; allowed plaintiff's false imprisonment and assault and battery claims to proceed; and, rejected Title 30 immunity to the medical defendants. The Court affirms the judgment of the Appellate Division allowing plaintiff's state law defamation and intentional infliction of emotional distress claims for compensatory and punitive damages and per quod claims to proceed. In addition, the Court affirms the judgment of the Appellate Division reinstating plaintiff's state law tort claim for invasion of privacy against defendant Ashworth, but reverses that judgment to the extent that it reinstated the claim against defendant Bruno.

4-14-09 DiMisa v. Acquaviva (A-35-08)

The third-party exception to the American Rule governing counsel fees does not apply where the tortfeasor and the putative third party are effectively one.

4-9-08 Township of West Orange v. 769 Associates, LLC
(A-113-07)

Where a condemnation action is abandoned, a condemnee is entitled to reasonable fees and expenses from the point at which the property is formally targeted for condemnation. In respect of the calculation of fees, the analysis, as in all other cases, is governed by the reasonableness principles of RPC 1.5. However, RPC 1.5(a)(4) has no role to play on the issue of the condemnee's entitlement to fees; that entitlement is triggered by the abandonment itself. Nor is there warrant in an abandonment case for a proportionality reduction under RPC 1.5(a)(4) based on a comparison of "the amount involved and the results obtained."

4-8-09 Lyle Real v. Radir Wheels, Inc. and Richard Conklin
 (A-26-08)

Lyle Real pled and proved a textbook Consumer Fraud Act claim. The trial court found by clear and convincing evidence that Conklin intentionally engaged in unconscionable commercial practices in connection with the advertisement and sale of merchandise; Conklin satisfies the CFA definition of "person" and the Corvette satisfies the CFA definition of "merchandise;" and plaintiff suffered an ascertainable loss.

4-7-09 N.J. Division of Youth and Family Services v. G.M.
 (A-6-08)

The statutory framework of Title Nine provides that upon a finding of abuse and neglect, the offending parent or guardian is entitled to a dispositional hearing to determine whether the children may safely return to his or her custody, and if not, what the proper disposition should be. The case is remanded for a hearing to determine the appropriate disposition pursuant to N.J.S.A. 9:6-8.51.

4-2-09 State v. Dionte Byrd (A-105-07)
 State v. Freddie Dean, Jr.

Defendants' convictions are reversed and the matter is remanded for a new trial because the trial court improperly introduced the statement of a witness who allegedly was made unavailable by intimidation, examined the witness outside the presence of defendants and their counsel, took testimony without placing the witness under oath, and denied defendants the opportunity to present evidence to rebut the evidence of intimidation. The Court determines also to seek the adoption of a forfeiture-by-wrongdoing exception to the hearsay rule that will allow the admission of a witness's statement offered against a party who has engaged in wrongdoing that was intended to, and did, procure the unavailability of the witness.

4-1-09 Stephanie M. Hirl v. Bank of America, N.A. (A-42-08)

In the context of the Electronic Fund Transfer Privacy Act, the word "account" cannot be isolated from the phrase "electronic fund transfer." Nor can the word "account" be read so as not to exist within the disclosure authorization of N.J.S.A. 17:16K-3. Thus, N.J.S.A. 17:16K-3 permits a financial institution to disclose information to a third party as prescribed by the

statute relative to an electronic fund transfer or an account with electronic fund transfer capability as elected by the consumer. Accordingly, the Court adopts the Appellate Division's construction of the Act and N.J.S.A. 17:16K-3 substantially for reasons expressed in the written opinion below.

3-26-09 Education Law Center v. New Jersey Department of Education (A-100-07)

A government record, which contains factual components, is subject to the deliberative process privilege when it was used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred during that process.

3-25-09 DEG, LLC v. Township of Fairfield, et al. (A-116-07)

Rule 4:50-1(e) does not relieve the Township of Fairfield from a consent judgment based on its settlement of a zoning dispute over the location of DEG, LLC's sexually oriented business, and the provision of the judgment that directed Fairfield to provide a certificate of nonconforming use did not violate the Municipal Land Use Law.

3-25-09 Penn National Insurance Company v. Frank Costa, et al. (A-36-08)

In order to determine whether an injury arises out of the maintenance, operation or use of a motor vehicle thereby triggering automobile insurance coverage, there must be a substantial nexus between the injury suffered and the asserted negligent maintenance, operation or use of the motor vehicle. In this case, there is no rational linkage between the negligent failure to clear the driveway of snow and ice and the entirely non-negligent maintenance activity in which Costa was engaged. Therefore, Costa's homeowners insurance policy must respond to Ariens's claims.

3-24-09 Abraham Hemsey v. Board of Trustees, Police & Firemen's Retirement System (A-15-08)

It was error for the Board to cancel Hemsey's PFRS retirement benefits and to require him to re-enroll in PFRS. Hemsey did not satisfy the statutory requirements for mandatory re-enrollment because there was insufficient credible evidence to conclude that he exercised administrative or supervisory duties

over police officers or firefighters.

3-18-09 Czar, Inc. v. Jo Anne Heath, et al. (A-114-07)

The Consumer Fraud Act, the Contractor's Registration Act, the New Home Warranty Act, and the regulations promulgated pursuant to those statutes were designed to provide an integrated scheme of protections for homeowners. The contractor, which neither acted as the general contractor nor qualified as a builder of new homes, was engaged in the business of home improvements and subject to the remedies of the Consumer Fraud Act.

3-17-09 State v. Paul J. Kuchera, Sr. (A-115-07)

Absent proper reasons, witnesses in criminal cases presumptively should be allowed to testify without restraints. Regardless of the identity of the proponent of the witness, trial courts are obligated to determine whether a witness is a sufficient security risk in order to justify restraints and, if so determined, restraints are appropriate. Further, whether a prosecution witness testifies in prison garb likely does not affect whether the trial as a whole is fair; nevertheless, in exercise of its supervisory powers, the Court find that, as a matter of course and unless otherwise affirmatively permitted by the trial court in the exercise of its discretion, witnesses in criminal cases, both for the prosecution and defense, should not testify in prison garb.

3-16-09 State v. Forrest M. Baker, Sr. (A-17-08)

The Interstate Agreement on Detainers does not apply when the State has not lodged a detainer in the sending state.

3-12-09 State of New Jersey v. Terrence Echols (A-12-08)

This case does not meet the standard of ineffective assistance of counsel necessary to warrant a new trial. The comments by the prosecutor did not deprive defendant of a fair trial and the failure of trial counsel to object to the comments or the failure of appellate counsel to raise that issue on appeal would not have resulted in a different outcome. In addition, although it would have been appropriate for the trial court to have given the requested alibi charge, the failure to do so was clearly harmless error, and even if appellate counsel had raised that issue on appeal the result would not have been different.

3-11-09 State of New Jersey v. Marcus Cassady (A-94-07)

There was no rational basis for a jury instruction on theft as a lesser-included offense to robbery where, in committing the crime, defendant threatened a bank teller by demanding money and then, when the money wasn't produced, vaulted a seven-foot partition into the teller's area, causing the teller to flee for her life. In addition, there was no reversible error in the trial court's consideration and weighing of aggravating and mitigating factors.

3-10-09 State of New Jersey v. Diego Vallejo (A-3-08)

This brief trial was poisoned by the recurring admission of evidence of other crimes and wrongdoings by defendant, Diego Vallejo, and by reference to the domestic violence restraining order against him. The trial judge's curative instruction was insufficient and, as a result, Vallejo was denied a fair trial.

3-9-09 Pagano Company v. 48 South Franklin Turnpike, LLC
(A-9-08)

In this dispute arising from the purchase of commercial property by 48 South Franklin Turnpike, LLC (Franklin), the facts, circumstances, and record, taken as a whole, demonstrate that Franklin affirmatively assumed the seller's obligation to pay real estate broker commissions that were due under leases it acquired through a general assignment.

3-5-09 Tyrell Hardy v. Humza Abdul-Matin, et al., and Liberty Mutual Insurance Company (A-112-07)

The unambiguous language in N.J.S.A. 39:6A-7(b)(2) and the Liberty Mutual insurance policy make it clear that the plaintiff may not receive Personal Injury Protection (PIP) benefits because he did not have the permission of the owner to occupy the vehicle in which he was injured.

3-4-09 State of New Jersey V. A.O. (A-107-07)

Polygraph evidence that is based on a stipulation entered into without counsel is inadmissible. A defendant may impeach the credibility of a victim-witness about false allegations made after the underlying allegations were made against the defendant.

3-4-09 Jen Electric, Inc. v. County of Essex (A-23-08)

The 2000 amendment to N.J.S.A. 40A:11-13(e) is intended as a statute of limitations for bid specification challenges and does not limit or otherwise substitute for traditional notions of standing. In the circumstances presented, plaintiff has standing to challenge the bid specifications issued by the County.

2-26-09 Mahmoud Agha v. Valerie M. Feiner, et.al. (A-1-08)

The testimony of a physician qualified to interpret an MRI was required to establish that the MRI represented proof of a herniated disc, and, absent such testimony, the trial court was required to give a limiting instruction regarding the jury's use of the MRI. Because the trial court's rulings had the effect of lulling Agha into believing that the production of the radiologist who prepared the report was unnecessary, a new trial is required.

2-25-09 State v. Juan Pena-Flores, et al. (A-129-06)
State v. Charles Fuller (A-15-07)

The Supreme Court affirms its longstanding precedent that permits an automobile search without a warrant only in cases in which the police have both probable cause to believe that the vehicle contains evidence and exigent circumstances that would justify dispensing with the warrant requirement. Whether exigent circumstances exist is to be decided on a case-by-case basis with the focus on police safety and the preservation of evidence. The Court also determines that a warrant obtained by telephonic or electronic means is the equivalent of an in-person warrant and does not require proof of exigent circumstances.

2-24-09 State v. Angelo Grenci, Jr. (A-104-07)

Defendant's trial in absentia on the superseding indictment did not comply with Rule 3:16(b). Because defendant was never arraigned on the superseding indictment and never waived - in writing or orally on the record - his right to be present at trial on that indictment, the trial should not have proceeded in his absence. Therefore, no conviction arising from any of the additional charges contained in the superseding indictment can stand. In addition, the trial court's instructions to the jury directed a verdict on an element of the burglary offense and thereby improperly relieved the State of its constitutional burden of proving guilt beyond a reasonable doubt.

2-23-09 In the Matter of the Civil Commitment of J.M.B.
(A-79-07)

When faced with an application for civil commitment under N.J.S.A. 30:4-27.26(b), a court may consider the circumstances that led to the qualifying prior conviction. When that conduct is substantially equivalent to the sexually violent conduct encompassed by the offenses in N.J.S.A. 30:4-27.26(a), then that prior conviction may provide the predicate for a civil commitment application under subsection (b). That determination may be made by the committing court, on application of the Attorney General.

2-19-09 Camie Livsey v. Mercury Insurance Group (A-96-07)

There are fundamental differences between the personal injury protection (PIP) statute and the uninsured motorist (UM) statute sufficient to bar the importation of the extent of PIP coverage in the context of a drive-by shooting to a UM coverage question. Also, because the insured's injuries from the drive-by shooting were not causally connected to the insured's use of her motor vehicle, the Court reverses the judgment of the Appellate Division and reinstates the trial court's judgment in favor of the insurer.

2-19-09 Rhonda Bosland v. Warnock Dodge, Inc. (A-97-07)

The Consumer Fraud Act does not require a consumer to seek a refund from an offending merchant prior to filing a complaint.

2-18-09 Elizabeth Baboghlian v. Swift Electrical Supply Co.
(A-106-07)

Under the circumstances presented, in the absence of a statutory requirement to install a fire alarm system, the former Code requirements to obtain a permit and perform inspections do not justify the imposition of a nondelegable duty on a property owner in the installation of a fire alarm system.

2-5-09 State v. Wayne DeAngelo (A-73-07)

The Lawrence Township sign ordinance violates the First Amendment right to free speech and is overbroad.

2-4-09 State v. Tony L. Slater (A-72-07)

Judges are to consider and balance four factors in evaluating

motions to withdraw a guilty plea: (1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of the defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal could result in unfair prejudice to the State or unfair advantage to the accused. This defendant has met his burden and is entitled to withdraw his guilty plea in the interest of justice.

2-3-09 State v. John L. Nyhammer (A-85-07)

The trial court did not err in finding, based on the totality of the circumstances, that Nyhammer knowingly, voluntarily, and intelligently waived his Miranda rights under both federal and state law. Thus, the trial court did not abuse its discretion in admitting Nyhammer's confession into evidence. Further, a defendant cannot assert that he was denied his right of confrontation under the federal and state constitutions unless he first attempts to cross-examine the witness on the core accusations in the case. Nyhammer had the opportunity to cross-examine the child-victim at trial about her out-of-court testimony implicating him in the crime but chose not to do so; therefore, he cannot claim that he was denied his right of confrontation.

1-29-09 Suzanne K. Ogborne v. Mercer Cemetery Corporation
(A-66/67-07)

The "Palpably unreasonable" standard of N.J.S.A. 59:4-2 applies to this cause of action because it concerns the physical condition of public property. In addition, the issues of proximate cause and comparative negligence must be retried because issues concerning the dangerous condition of the property and whether the City acted in a palpably unreasonable manner are intertwined with the issues of causation and foreseeability.

1-29-09 Piermount Iron Works, Inc. v. Evanston Insurance
Company (A-19-08)

Evanston is not subject to N.J.A.C. 11:1-20.2(j)'s automatic renewal penalty. Surplus lines insurance policies are exempted from the regulatory cancellation and nonrenewal provisions that apply to primary insurers. Further, Evanston's use of a required, standard form commercial lines policy, which contained a nonrenewal provision, did not demonstrate intent to submit voluntarily to the automatic-renewal penalty regulation.

1-27-09 Lourdes Medical Center of Burlington County v. Board of Review (A-70/71-07)

A loss of revenue attributable to the strike that does not result in a substantial curtailment of work at the hospital is not the equivalent of a "stoppage of work." Thus, the Board of Review did not act arbitrarily or capriciously in concluding that Lourdes Medical Center did not suffer a "stoppage of work" within the intendment of N.J.S.A. 43:21-5(d). Accordingly, the striking nurses qualify for unemployment benefits.

1-27-09 State of New Jersey v. Jama Smith (A-93-07)

The Court affirms defendant Jama Smith's conviction on charges of knowingly possessing a firearm that has been defaced, in violation of N.J.S.A. 2C:39-3(d). Because the term "knowingly" modifies "possession" in this statutory provision, the State was required to prove that Smith knew he possessed the firearm. The State was not required to prove that Smith also knew that the firearm was defaced.

1-22-09 Mazzacano v. Happy Hour Social and Athletic Club of Maple Shade, Inc. (A-102-07)

The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act permits a finding of liability when a licensed alcoholic beverage server allows a patron to become visibly intoxicated through the self-service of alcohol at a party. However, the Act does not impose a separate duty to monitor alcohol ingestion or define negligence as the failure to monitor, and the Court declines to impose a monitoring duty that is not set forth in the Act. In this civil action arising from the deaths of party-attendees who were riding in a car driven by another attendee who became intoxicated at the party through the self-service of alcohol, there was sufficient evidence in the record to support the jury's verdict that the server did not negligently provide alcohol to the driver when he was visibly intoxicated.

1-22-09 State v. Rahmann Reeds (A-103-07)

Defendant suffered undue prejudice from the evidence in the form of expert testimony opining, in effect, that he constructively possessed the drugs found in the vehicle he was driving. This ultimate-issue testimony usurped the jury's singular role in the determination of defendant's guilt and irredeemably tainted the remaining trial proofs, producing an unjust result in defendant's trial.

1-21-09 McKesson Corporation v. Hackensack Medical Imaging
(A-2-08)

Texas had personal jurisdiction to enter the default judgment against defendant, and that judgment is enforceable in New Jersey.

1-15-09 IMO the Appeal by Earle Asphalt Company (A-37-08)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Skillman's written opinion. Chapter 51 of the Campaign Contributions and Expenditure Reporting Act is constitutional. The Department of Treasury properly rejected Earle Asphalt's claim to an exemption from the disqualification because, even though the contractor undertook steps to obtain reimbursement of its disqualifying contribution within thirty days, it did not receive that reimbursement within that thirty-day period.

12-23-08 Tiffany N. Jastram v. Scott M. Kruse (A-98-07)

The Appellate Division overstepped its bounds in this matter, essentially reweighing the evidence and substituting its judgment for that of the jury and the trial judge, without warrant to do so. The jury verdict is reinstated.

12-23-08 M.S. v. Millburn Police Department (A-80-07)

The Court does not conclude, as the Appellate Division did, that N.J.S.A. 2C:58-3(c)(8) applies whenever a firearm seized pursuant to the Prevention of Domestic Violence Act of 1991 is not returned to the owner. Rather, the statute imposes a statutory bar to obtaining a gun permit only when a firearm seized in a domestic violence matter is not returned for a reason set forth in the Domestic Violence Forfeiture Statute, N.J.S.A. 2C:25-21 (d)(3).

12-22-08 Riya Finnegan LLC v. Township Council of the Township of South Brunswick (A-65-07)

The ordinance that was adopted by the municipality's governing body, which rezoned the parcel of land at issue in this case, was arbitrary and capricious and constituted impermissible inverse spot zoning.

12-22-08 State v. Paul Amelio (A-92-07)

Based on the report to dispatch by defendant's seventeen-year-old daughter, who identified herself, reported that her father was driving drunk, described the vehicle, and exposed herself to criminal prosecution if her report was knowingly false, there was reasonable and articulable suspicion of an offense to support a constitutional motor vehicle stop by the police.

12-17-08 Walter Sroczyński v. John Milek (A-68/77-07)

A carrier does not satisfy N.J.S.A. 34:15-81 merely by transmitting electronic notice of cancellation of coverage to the Commissioner by way of the FTP. The statute clearly requires that to effectuate the cancellation, a carrier also must file a statement certified by an employee that the required notice was provided to the insured.

12-17-08 In re Opinion 39 of the Committee on Attorney Advertising (A-30/31/32-08)

Opinion 39 of the Committee on Attorney Advertising is vacated and the matter is referred jointly to the Advisory Committee on Attorney Advertising, the Advisory Committee on Professional Ethics and the Professional Responsibility Rules Committee for expedited review and modification of RPC 7.1(a)(2) and (3).

12-16-08 Maria Tartaglia v. UBS PaineWebber Incorporated and Herbert Janick (A-107/108-06)

Tartaglia should have been given the benefit of an adverse inference charge relating to her spoliation of evidence claim; the trial court erred in determining that certain evidence could not be considered by the jury in relation to Tartaglia's claim that she had engaged in protected activity; the complained of comments by defense counsel in summation were improper; and summary judgment on Tartaglia's common law wrongful termination claim was improperly granted.

12-9-08 OFP, L.L.C. v. The State of New Jersey (A-76-07)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Skillman's opinion.

12-3-08 Donald T. Polzo, etc. v. County of Essex, et al.
(A-69-07)

Due to the procedural circumstances of this case, it cannot be

determined as a matter of law whether the County of Essex was on constructive notice of a dangerous condition on public property; therefore, the matter is remanded to the Law Division for further proceedings.

11-26-08 Garvin McKnight v. Office of the Public Defender
(A-109-07)

In a legal malpractice action brought by a criminal defendant against the attorney who represented him or her in a criminal case, the claim does not accrue and the statute of limitations does not begin to run until the criminal defendant receives relief through some form of exoneration.

11-25-08 IMO the Petition of Adamar of New Jersey, Inc.
(A-41-08)

Judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Cuff's written opinion below. The Casino Control Commission's determination to deny applications for renewal of Tropicana AC's casino and casino hotel alcoholic beverage licenses and for plenary qualification of Tropicana Casinos and Resorts, Inc., as the parent company of Tropicana AC, is amply supported by substantial credible evidence in the record.

11-24-08 P.V. v. Camp Jaycee (A-31-07)

Although the Court recognizes the vitality of New Jersey's own policy of immunizing charities, in this case, it must yield to the presumption favoring application of Pennsylvania law, which has not been overcome.

11-18-08 Raymond Arthur Abbott, etc., et al. v. Fred G. Burke, etc., et al. (M-969/1372-07)

The State's application to have its new school funding formula declared constitutional and plaintiffs' cross motion seeking an order to preserve the status quo cannot be resolved on an undeveloped record. The matter must be remanded for further proceedings.

11-17-08 Borough of Glassboro v. Fraternal Order of Police Lodge No. 108 (A-75-07)

The Court's careful review of the record in light of the standards governing judicial review of public employment

arbitration awards leads to the conclusion that the arbitrator properly determined that the record did not adequately support the elevation of Highley over Amico. Nonetheless, it was beyond the arbitrator's power to fashion a remedy that promoted Amico.

11-10-08 State v. Ernest Spell (A-99-07)

The Court affirms defendant's conviction substantially for the reasons expressed by the Appellate Division. The Court vacates that part of the Appellate Division's holding that requires police officers to read the final, additional paragraph of the standard statement whenever a defendant refuses to provide a breath sample immediately upon request.

9-24-08 Lawrence DeNike v. Michael Cupo (A-61-07)

Judges must avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the Judiciary. Unfortunately, the negotiations between trial judge and lawyer in this case created an appearance of impropriety. Stated simply, the conduct here fell short of the high standards demanded of judges and fellow members of the legal profession and had the capacity to erode the public's trust. Because any lesser remedy would allow reasonable doubts to linger about the fairness of the outcome of the case, the judgment of the Appellate Division is reversed and the matter is remanded for a new trial.

9-22-08 Randy Senna V. Walter Florimont, et al. (A-35-07)

Based on the content, form, and context of the challenged speech, including the identity of the speaker and the intended audience, the speech involved here did not touch on matters of public concern. The false and defamatory statements of defendants' employees, impugning the honesty of a business competitor, fall into the category of commercial speech that is not entitled to heightened protection. The negligence standard is the appropriate standard of care.