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# CRIMINAL LAW UPDATE

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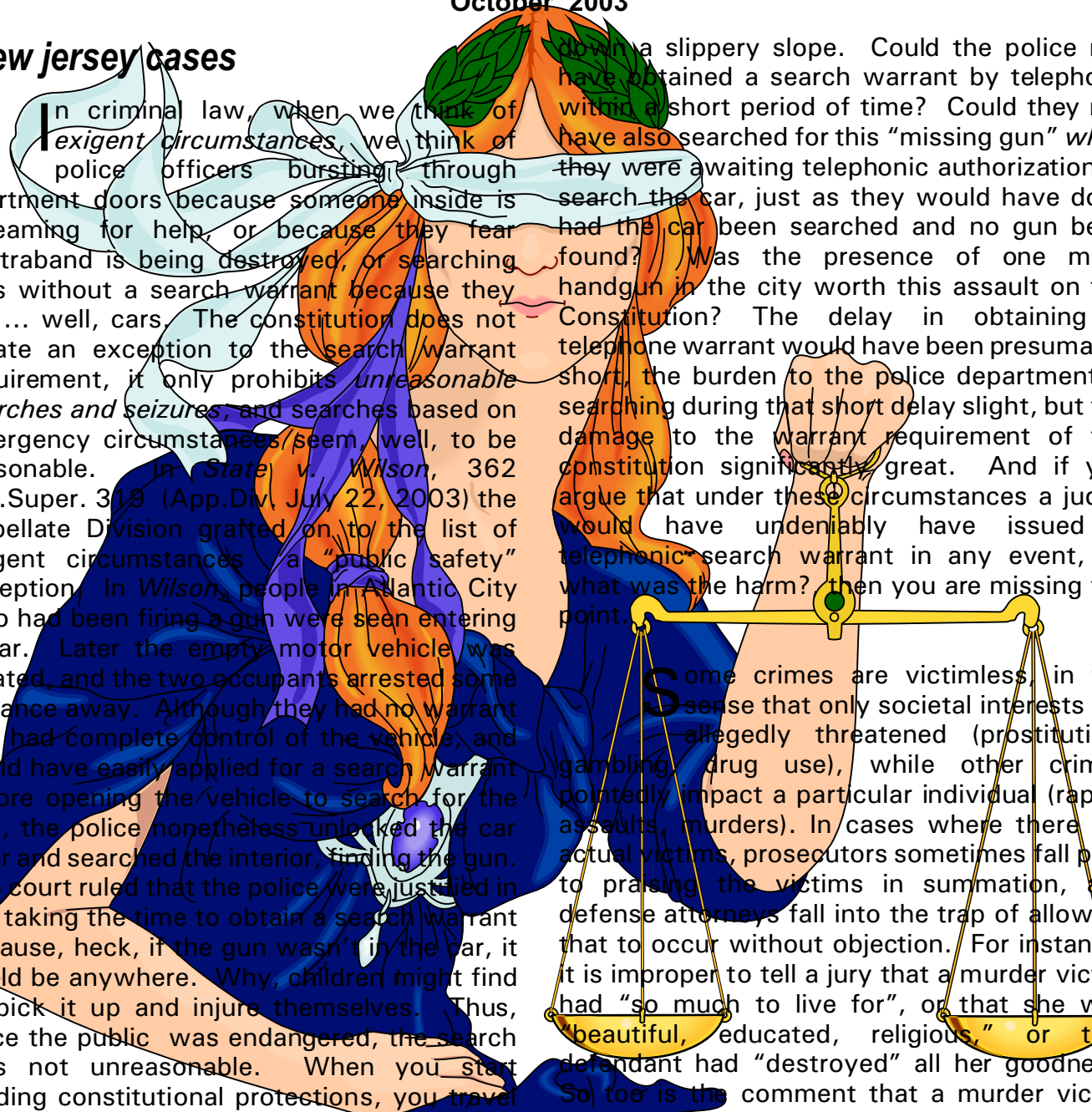
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## new jersey cases



In criminal law, when we think of *exigent circumstances*, we think of police officers bursting through apartment doors because someone inside is screaming for help, or because they fear contraband is being destroyed, or searching cars without a search warrant because they are ... well, cars. The constitution does not create an exception to the search warrant requirement, it only prohibits *unreasonable searches and seizures*, and searches based on emergency circumstances seem well, to be reasonable. In *State v. Wilson*, 362 N.J.Super. 319 (App.Div. July 22, 2003) the Appellate Division grafted on to the list of exigent circumstances a "public safety" exception. In *Wilson*, people in Atlantic City who had been firing a gun were seen entering a car. Later the empty motor vehicle was located, and the two occupants arrested some distance away. Although they had no warrant and had complete control of the vehicle, and could have easily applied for a search warrant before opening the vehicle to search for the gun, the police nonetheless unlocked the car door and searched the interior, finding the gun. The court ruled that the police were justified in not taking the time to obtain a search warrant because, heck, if the gun wasn't in the car, it could be anywhere. Why, children might find it, pick it up and injure themselves. Thus, since the public was endangered, the search was not unreasonable. When you start eroding constitutional protections, you travel

down a slippery slope. Could the police not have obtained a search warrant by telephone within a short period of time? Could they not have also searched for this "missing gun" while they were awaiting telephonic authorization to search the car, just as they would have done had the car been searched and no gun been found? Was the presence of one more handgun in the city worth this assault on the Constitution? The delay in obtaining a telephone warrant would have been presumably short, the burden to the police department in searching during that short delay slight, but the damage to the warrant requirement of the constitution significantly great. And if you argue that under these circumstances a judge would have undeniably have issued a telephonic search warrant in any event, so what was the harm? then you are missing the point.

Some crimes are victimless, in the sense that only societal interests are allegedly threatened (prostitution, gambling, drug use), while other crimes pointedly impact a particular individual (rapes, assaults, murders). In cases where there are actual victims, prosecutors sometimes fall prey to praising the victims in summation, and defense attorneys fall into the trap of allowing that to occur without objection. For instance, it is improper to tell a jury that a murder victim had "so much to live for", or that she was "beautiful, educated, religious," or that defendant had "destroyed" all her goodness. So too is the comment that a murder victim

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had sacrificed her life to save her family, calling it her “last act of heroism.” Such comments may seem natural, and perhaps inoffensive, because they do not relate to the accused’s culpability for the offense, but they are *improper* because they are frequently not supported by the record, generate sympathy for the victim, inflame the jury, and are just simply not relevant to any issues in the case. In determining whether the comments were sufficiently egregious to warrant a reversal, one of the factors the appellate court will look at is whether defense counsel made timely and proper objections. Veteran and experienced trial counsel recognize and usually honor the unwritten rule of collegiality with respect to summation comments, but there are comments and circumstances which mandate that the summation be interrupted and a timely and proper objection made. The secret, of course, is to distinguish, on the fly, between a summation comment that wounds, and one that wounds unfairly. *State v. Jang*, 359 N.J.Super. 85 (App.Div. 3/28/03).

### ***news, tips, laws and observations***

**A**s of August 1<sup>st</sup> a victim of sexual assault has the statutory right to consult with the prosecuting authority prior to the conclusion of any plea negotiations. The victim does not have the right to demand a particular plea bargain; the prosecutor retains the authority to enter into any plea agreement which the prosecutor deems appropriate. *N.J.S.A. 52:4B-34 et seq.* The law strikes an appropriate balance in giving victims of sex crimes the absolute right to confer with the prosecutor, while not restricting the right of the prosecutor to do what he or she believes is just under the circumstances. A victim may understandably be driven by anger and revenge. The prosecutor enjoys no such luxury, and is under an ethical obligation to do what is fair. Furthermore, a prosecutor can see the larger picture, whereas a victim cannot. No victim should be further traumatized by having his/her voice unheard during the process; similarly, no prosecutor should be required to follow the dictates of a victim where the result

may be statutorily correct, but ultimately unjust. It is a balancing act without a net.

**B**ail hearings in *ordinary* cases will be done by video for all non-Public Defender clients in the Bergen County Jail on *Tuesdays* and *Thursdays*. If you want a *Monday*, *Wednesday* or *Friday* bail hearing for a client in the BCJ, be prepared to waive his/her appearance. This was effective October 1<sup>st</sup>. You can request a bail hearing by speaking with the new Bail Coordinator, Jacqueline DaSilva (Bruno Gerardi is out indefinitely), at 201-646-3667. Email her at [Jacqueline.Dasilva@judiciary.state.nj.us](mailto:Jacqueline.Dasilva@judiciary.state.nj.us)

**I**f your client was a citizen of the State of New Jersey at the time he committed a sexual offense requiring Community Supervision for Life, then he must, at least currently, remain in the State of New Jersey, and cannot move out of state. Other states have no program similar to CSL, and thus are unequipped to handle supervision of such persons. A plea to a crime requiring CSL is, in effect, a life sentence to New Jersey.

**N**eed to know where your imprisoned client is? His parole date? Even see his/her picture (you sicko)? Login in to the NJ Department of Corrections website <http://www.state.nj.us/corrections/>

**M**any clients see police, the criminal justice system, even their own attorneys, as being biased against them. Likely this is just a sad part of the human condition, and not just a recent phenomenon, if this 400 year-old observation is to be believed. *Justice is always violent to the party offending, for every man is innocent in his own eyes.* Daniel Defoe (1660-1731), English journalist, novelist. Interesting thought.

**C***ourage is the thing. All goes if courage goes.* Joseph Addison (1672-1719), English essayist, poet, statesman. True for clients, truer for attorneys.

