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# CRIMINAL LAW UPDATE

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September 2004

## new jersey cases

**P**rosecutors and their representatives may interrogate a suspect without defense counsel's consent before an indictment has been obtained but after the State has filed or issued a criminal complaint or arrest warrant against the suspect. However, *failing to inform* a suspect before questioning that a criminal complaint or arrest warrant has been filed or issued against him makes his waiver of his right against self-incrimination *invalid*. *State v. A.G.D.* (178 N.J. 56 (2003)).

**I**n *State v. Rucki* (367 N.J. Super. 200, 3/1/04), defendant took the stand and said that he and the codefendant, who had previously pled guilty and was not on trial, were the victims, rather than the perpetrators of a fight. In response, the prosecutor sought to admit the guilty plea of the codefendant. *No you can't*, argued the defendant. *Yes you can*, said the judge. *Hey, you're the judge, you can do anything you want, but you shouldn't have*, ruled the Appellate Division. Guilty pleas of non-testifying codefendants or witnesses cannot be admitted, because they are hearsay and violate the defendant's right to cross-examine his accusers. The State argued that defendant opened the door by taking the stand and denying the guilt of his codefendant. The court said that the doctrine of "opening the door" is often misunderstood and too broadly applied. It *can* be used to prevent prejudice, it *cannot* go further and inject prejudice into the trial. *Close the door and turn out the lights*.

## guidelines and rules

**A**mong the municipal court rules effective this month, police may now personally serve a summons charging either a disorderly or petty disorderly persons offense upon a defendant without effecting a custodial arrest. This was as a consequence to the New Jersey Supreme Court's decision in *State v. Dangerfield* (171 N.J. 446 (2002)). Remember, the presumption is that the police will take the least intrusive method for charging a defendant, and for defendants who are searched as part of a custodial arrest, these new court rules (7:3-2(a)(2), 7:3-1(c)) may buttress an argument that but for a violation of these rules and the spirit embodied in *Dangerfield*, the illicit drugs, weapon, or other contraband found on your client would never have been discovered.

Another municipal court rule change effective this month (7:6-2(d)(5)) requires that prosecutors personally appear in the court room and place on the record the terms and factual basis for pleas involving any offense except minor offenses that are contained on a violations schedule. This lamentable rule change will now require the prosecutor to stand in the court room parroting what he has already placed in writing before the court, thus delaying the court proceedings, since he will not be able to simultaneously meet with attorneys and *pro se* defendants to work out plea bargains. Granted, there may have been a handful of cases out of the hundreds of thousands of municipal court cases that are prosecuted each year in which

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## A Publication of the Bergen County Bar Association

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something went awry, but are these infrequent glitches sufficient cause to upset a system which was working so well, and thereby grind our municipal courts to a virtual standstill? It is a value judgment, but one which practicing attorneys would clearly not agree.

The Plea Bargaining Guidelines for Municipal Court (Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey" as found as an appendix to Part 7 of our court rules) now permit dismissal of other drug counts when the defendant is pleading to at least one drug offense arising from the same incident. The same is true when a defendant seeks entry into the Conditional Discharge Program. This now brings the plea guidelines into conformance with what has been the universally accepted practice in municipal courts.

Did you know that our new DWI statute mandates that the Attorney General create guidelines for the prosecution of DWI offenses? The application of the current plea bargaining guidelines as they relate to our new DWI laws seems somewhat unclear in certain respects, as the statutes have changed, but the guidelines have not. Will the Attorney General guidelines supplant the Supreme Court's guidelines? Supplement them? Deal with different plea bargaining issues? The municipal prosecutor is subject to the Attorney General; the municipal judge takes his/her direction from the New Jersey Supreme Court, court rules, and the state constitution. Maybe there will be a giant *Wrestlemania* between the legislature and the Supreme Court to decide supremacy, but alas, I fear, rather than such an amusing spectacle, the two sets of guidelines will be read *in para materia* to minimize prosecutorial discretion. *Wrestlemania* seems preferable.

### ***interesting, educational, weird***

So, they revise the DWI laws. Your client was charged with DWI before the change, but tried after it was revised. The State cannot get the reading into evidence, but defendant looked and acted like a drunk, and gets convicted. Six month loss of license for the poor SOB because it was the old statute. Under the new statute he would have

only lost his license for three months. Nothing you could do, right? Just unlucky. Not one to take the situation lying down, brother attorney Michael Beatrice did some research to buttress his conviction that this was unfair, wrote a compelling brief, and argued it to a somewhat skeptical judge. Lo and behold, the judge agreed that state law almost mandated that the defendant get the benefit of sentencing under the new law. The widespread belief that Michael won because he is so cute is wrong on so many levels. Kudos.

The Mercer County Bar Association is presenting a four hour seminar called "DWI Sentencing 2004 - All the Rules Have Changed." It will be offered on September 18, 2004 at 9:00a.m. at the Ramada Inn and National Conference Center, 399 Monmouth Street, East Windsor, NJ (just off Exit 8 of the NJTP). Advance registration fee is \$99.00. Fax your reservation to 609-585-5537; include name, address, telephone, fax, and e-mail.

If I were him I'd have the car *whacked*. Story from a fellow Bergen County practitioner: Client was out driving his brand new expensive GM vehicle when he got into an accident with a fixed object. No one was around, the old "no harm, no foul" rule, so he left the scene and went home. End of story. Whoops, nope, not yet. This brand new, expensive luxury GM vehicle was equipped with *On Star*, which detected the deployment of the airbags, notified the local police department, and through the built-in GPS system in the vehicle, gave the police the exact location of the client's vehicle, the driveway of his home. One hour after the accident, the police arrived at the client's front door to charge him. *Man, you know things are going bad when your own car turns you in. Think the car was pissed?*

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