
CRIMINAL LAW UPDATE

EDITED AND AUTHORED BY JOSEPH P. REM, JR.

ALL COMMENTS AND SUBMISSIONS, 201-488-1234; FAX 487-8030; E-MAIL JREM@REMZELLER.COM

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Cases

Heads up, important case to follow. Not ~~Mets-sign Beltran and Pedro~~ important, but important enough that its widespread and common applicability carries the potential to completely alter the outcome of many municipal court and criminal cases. In *State v. Eckel* (App.Div. 12/29/04), the court was faced with the question of whether the passenger compartment of an automobile could be searched incident to a lawful arrest after the defendant was restrained and placed in the rear of the patrol vehicle. The United States Supreme Court in *Chimel v. California*, 395 U.S. 752 (1969) held that as an exception to the warrant requirement of the Fourth Amendment to the United States Constitution, an arresting officer has the right to search not only the person arrested but the area in to which an arrestee might reach in order to grab a weapon or evidentiary items. *New York v. Belton*, 453 U.S. 454 (1981) held that whenever police make an arrest of an occupant of an automobile, they may search the passenger compartment of that automobile as well as the contents of any containers found within the passenger compartment. Under the authority of *Belton*, police officers in New Jersey have routinely rummaged through interiors of cars like hungry bears at a camp site foraging for evidence of a crime. Any crime, actually, whether related to the reason for the arrest or not. *Eckel* now puts an end to that madness and completely alters the legal landscape, restoring the original reasoning to

the "search incident to a lawful arrest" warrant exception by returning to the roots of that exception: you can only search those areas where someone you are arresting can currently reach to grab a weapon to hurt you, or to destroy evidence. Unless the police are arresting Doug Henning or David Blaine, there is little chance that a handcuffed defendant in the locked rear compartment of a patrol car can reach under the front seat of his automobile 50 feet away to pull out a gun to harm the officers. The court poignantly quotes from *Thornton v. United States*, 541 U.S. 615 (2004) ~~is noting~~ that up until now "[I]n our search for clarity, we have now abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles during which officers with no definite objective or reason for the search are allowed to rummage around in a car to see what they might find." The difficulty judges and the public have with this holding is that it lets some people get away with crimes. Motorists who have drugs or guns hidden within their cars will have those charges dismissed if the contraband is uncovered once the defendant is snugly tucked away in the rear of the patrol car. The cases that never get before the court, however, and which the judges and public do not see, are those multitude of other cases where honest people, with no contraband, weapons or the like in their vehicle have the contents of their car tossed like a Caesar salad and their privacy rights trampled, even

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though they have committed no wrong. It is *these people* judges are protecting when they suppress the occasional gun or drugs found in an unconstitutional search. And it is why we can all sleep well in the sanctity of our homes, free from unwarranted governmental intrusion.

Putting your client on the stand -- gasp! -- is a frightful and unnerving experience. For you, let alone the client. Clients are loose cannons who invariably shoot as many holes into your case as they do the State's. They roll around on the shifting deck firing indiscriminately at all in the court room. One could seriously question why even jurors aren't injured more often. But, sometimes, it is necessary to put a client on the stand. A good defense attorney will put the client on last, so he can hear not only all the testimony of the State's witnesses, but his own defense witnesses as well. That, of course, invites the inevitable prosecutorial summation comment that asks the jury to question the defendant's credibility, given his/her opportunity to hear everything that transpired in the court room and craft his/her testimony accordingly. It is an argument with a seductively subversive appeal. But does it penalize a client exercising his/her Sixth Amendment right to be present at trial? Even given the considerable leeway in delivering prosecutorial summations, the Supreme Court in *State v. Daniels*, 182 N.J. 80 (2004) emphatically said *yes*. The Court reminded us that a prosecutor must refrain from improper methods that may result in a wrongful conviction, including comments that the defendant tailored his/her testimony because it inverts the right to testify and to be present at trial enjoyed by all defendants. Unless there is specific evidence that the prosecutor can point to in summation that justifies the inference that the defendant tailored his/her testimony, a generic accusation of tailoring debases the truth-seeking function of the adversary process, and violates the respect for the defendant's individual rights, ignoring the presumption of innocence. The *Daniels* court reminds defense attorneys that they must object to such comments; but when they do, the powerful language used by this court would

suggest an equally strongly worded curative instruction must be given.

*The Criminal Practice Committee
and Municipal Court Committee
Presents*

**Tiptoeing Through The Minefield
Of Criminal Convictions and
Deportation Consequences
Without Getting Blown Up.**

Thursday February 15th, 4:30–6:30 pm
Judge Moses Courtroom

Lecturers

**Jeffrey B. Steinfeld, Esq.
Jerard A. Gonzalez, Esq.**

Call Bergen County Bar Association HQ
201-488-0032 or see flyer

Thirty-five years ago in a training film on karate, I saw a man break a very thick board with a single chop, using only the side of his hand. He later explained that the secret to accomplishing this feat was paradoxically *not* to attempt to break the board, but rather to move his hand and arm from its upraised position to a position at rest at his side. If he accomplished that, in the process, the board would be broken. In baseball they teach that when down by five runs, do not attempt to hit a 5-run homer, merely try to get on base. In trials, is it all that much different? Try to accomplish what you can with the witness before you, rather than trying to win the case with every question to every witness. "The superior man makes the difficulty to be overcome his first interest; success only comes later."-- *Confucius (c. 551-479? BC), Chinese sage.*

