

---

---

# 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

---

February 2006

## cases

The New Jersey Supreme Court has again shown why it is among the most respected courts in the land. In *State v. Eckel* (1/10/06) the Court affirmed the importance of New Jersey's Art. I, Par. 7 constitutional protection against unreasonable searches by declaring unconstitutional searches of motor vehicles under the "search incident to a lawful arrest" rubric where the defendant is safely and securely out of the car and in police custody. Police have traditionally searched the interiors of cars following arrests on three grounds: the need to find weapons which the accused may grab to use against them; to find evidence which the accused can reach and destroy; and because it is fun to find even more bad stuff to jam up the accused even worse. *New York v. Belton*, 453 U.S. 454 (1981). Under the authority of *Belton*, police officers in New Jersey have routinely rummaged through cars like hungry bears at a camp site. *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 Houdini or David Copperfield, 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 Appellate Division had poignantly quoted from *Thornton v. United States*, 541 U.S. 615 (2004) in 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 federal constitution still permits such searches, but our Supreme Court ruled in *Eckel* that to follow suit "would require us to accept a theoretically rootless doctrine that would erode the rights guaranteed to our own citizens...." The difficulty judges and the public have with this holding is that it lets some people get away with crimes. And that is true: 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 citizens 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. It is *these people* judges are protecting when they suppress the occasional gun or drugs found in an unconstitutional search.

---

## A Publication of the Bergen County Bar Association

*The comments contained in this publication are not necessarily those of the Bergen County Bar Association; if you disagree with them, they are not even necessarily those of the author.*

---

Remember, in advising clients as to sentencing exposure, do not speak in terms of presumptive sentences: they are no longer constitutional. *State v. Natale*, 184 N.J. 458 (2005). The sentence will be somewhere between the maximum and the minimum, as determined by the aggravating and mitigating factors. Oh, and the mood of the judge.

The holding in *Natale*, the New Jersey version of The United States Supreme court decision in *Blakely v. Washington*, is that a defendant's sentence cannot be increased beyond the statutory maximum unless facts necessary to do so have been ruled upon by a jury (i.e., the jury finding as to the weight of drugs involved, moving some offenses from a 3<sup>rd</sup> degree to a 2<sup>nd</sup> degree or even a 1<sup>st</sup> degree). But what about a parole disqualifier? Can a judge do that on judicial fact finding alone, absent a determination by a jury as to the factors which prompt the parole disqualifier? In *State v. Abdullah*, 184 N.J. 497 (2005) our New Jersey Supreme Court said "yes," since a parole disqualifier does not lengthen the sentence beyond the statutory maximum. However, it does increase the maximum time that a defendant will *actually* serve, even if not above the statutory maximum for the offense. *Abdullah*, then, thus undermines the reasoning of *Natale* as it applies to time defendants *actually spend* in prison for offenses on a practical level, if not on a theoretical, constitutional, philosophical level. Ask any defendant who is doing increased time on a parole disqualifier whether that distinction really matters and see what answer you get.

Are you a drug dealer? Are you carrying "indicia of a drug-dealing operation" on you? Are you sure? Don't be so quick to answer these questions in the negative. The county prosecutor of an adjoining county was quoted in *The Herald News* on Friday January 6, 2005 as stating that money--what he called (wink, wink) "street money"--was found in a location suggesting a drug dealing operation. "It's all twenties, tens, a lot of singles, some hundreds,

some fifties - - mostly what we call "street money." So check your purses and pockets. Unless you have only five dollar bills, you could be a drug dealer.

***The Complete Guide to Prosecuting, Defending and Understanding DV Law and Procedure.***

A BCBA Seminar  
**Thursday, February 9<sup>th</sup>**  
**4:30 p.m.**

Judge Moses Courtroom  
\$25 advance (\$30 door)

**Honorable Harry G. Carroll**  
(former DV judge)  
**Sharyn J. Peiffer, A.P.**  
(BCPO DV prosecutor)  
**Remi L. Spencer, Esq.**  
(noted DV lecturer)

- What exactly is the DV process and procedure?
- When does a relationship qualify as "domestic"?
- What grounds qualify as harassment and what *do not*?
- Are you entitled to discovery?
- Criminal violations arising from a civil order?
- Can a court order remedies including support, visitation, substance abuse and anger management?

***Don't miss this nuts 'n bolts seminar!***

For the novice to the  
experienced trial attorney!  
**Call the BCBA to register today!**  
201-487-0032

***Injustice anywhere is a threat to justice everywhere.*** Dr. Martin Luther King, Jr. *When you think that you, being only one person, cannot make a difference, think of Dr. King.*

