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# CRIMINAL LAW UPDATE

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## cases

Car searches. They usually result from either a plain view observation, or a search incident to the arrest of an occupant. As we noted a few months ago, on January 10<sup>th</sup> the law in New Jersey changed dramatically as to such searches, and this state now diverges from federal law as to what is permissible. The *federales* allow police to search a car after a defendant is arrested, handcuffed and placed into a patrol car, because he could have reached anywhere in the interior of the car to grab a weapon to harm the officer, or to destroy evidence. In two cases decided on the same day, our state Supreme Court held that once the varmint is securely hogtied (not the court's terminology) and corralled in the patrol car, he ain't no real threat to be fixin' to do any of those things. So ixnay on the earchsay. *State v. Eckel* (185 N.J. 523), *State v. Dunlap* (185 N.J. 543).

But when if ever can police warrantlessly search the vehicle regardless of a contemporaneous arrest? Unless the police have *both* probable cause to believe there is contraband in the car *and* articulable exigent circumstances (read: unexpected, spontaneous and swift moving) to justify an immediate search, *a warrant is required* before the privacy and sanctity of the likely McDonald's garbage-strewn car can be violated. *State v. Cooke*, 163 N.J. 657 (2000). And remember:

- if it is a MV stop for anything other than DWI or CDS/MV, police can never search the vehicle merely for evidence related to the MV offense, i.e., to look

- around for a driver's license when the driver turns up as suspended. *State v. Pierce*, 136 N.J. Super. 184 (1994);
- Police can only search those areas likely to contain what it is they have probable cause to search for, i.e., if they believe the car contains stolen stereo system, they cannot search the glove compartment or center console. *Terry v. Ohio*, 392 U.S. 1 (1968);
- Possession of a small, personal use amount of marijuana by a vehicle occupant *does* give rise to probable cause that the passenger compartment of the car may contain more of the same, but such amounts do *not* give rise to a reasonable belief there is any in the trunk, and a search of the trunk would be unconstitutional. *State v. Patino*, 83 N.J. 1 (1980);
- If police have to impound the car because the driver has been arrested for, say, a bench warrant or something unrelated to an offense committed in the car, they can search the car if regular procedures exist to do so (to protect items found therein, or protect police from allegations of theft), but only after they give the driver the option of either securing the car himself, or having someone else come and take custody of it. *State v. Slockbower*, 79 N.J. 1 (1979);
- *Before police can even ask for consent to search a vehicle*, the office must have an articulable suspicion that a

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## 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.*

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search will yield evidence of criminal activity, and thereafter must advise the motorist of his right to refuse. *State v. Carty*, 332 N.J. Super. 200 (App. Div. 2000).

Clients are sometimes(?) wiseguys to police officers. Oftentimes that is the primary reason they are clients at all. On occasion they will refuse to cooperate with investigating officers and supply identifying information such as name, address and the like. They are then charged with *Obstructing Justice*, N.J.S.A. 2C:29-1a. A person commits this offense if he “purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.” So long as your client does nothing physical or violent, or otherwise unlawful, then merely refusing to answer such questions is, well...impolite, aggravating to the cops, likely to get him arrested...but otherwise lawful. *State v. Camillo*, 382 N.J. Super. 113 (App. Div., 12/27/05). By the way, in this case the complainants who called the police were identified in the opinion as “Mr. And Mrs. Good;” this poor schnook was toast right from the get-go.

A recent Appellate Division case is interesting for three reasons. One, it holds that Miranda warnings given before arrest *do not suffice* to admit statements made *after* arrest; warnings previously given under circumstances that did not amount to either custodial interrogation or formal arrest did not vitiate the need to re-advise. Second, it reminds us that a judge, having once made a pretrial or trial ruling, is free to change that ruling before final judgment if facts or law come to light justifying the change (here, the judge suppressed

defendant’s statement during trial after initially ruling it admissible pretrial). Third, it is interesting simply because of its name. *State v. Dispoto*, 383 N.J. Super. 205 (2/17/06).

## ***seriously miscellaneous***

Have a client who is looking at incarceration for a drug or drug-related offense, and wants to apply to Drug Court? Applications in Bergen County will only be accepted by sending them to Team Leader Charlette Dunlap, Room 134, Criminal Division, Bergen County Justice Center, or faxing to her at 201-342-9083. Once received by her, the application will be time stamped and a letter acknowledging receipt will be mailed to the attorney and a copy placed in the applicant’s legal file. Attempts to submit an application in any other manner will only result in the application being returned to the issuing attorney with instructions as to the proper application process. Questions regarding the status of an application may be directed to Ms. Dunlap at 201-527-2415.

The rules regarding filing of municipal appeals are actually stricter than you might think. R.3:23-2 provides that the original of a notice of appeal shall be *filed* with the *clerk of the municipal court* from which the appeal is taken within 20 days after entry of the judgment of conviction. Not just mailed within 20 days, but actually *received and filed*. Delivered late? Too bad. Want to move to extend the 20-day time limit? No way, Jose; out of luck, Buck—this time period cannot be enlarged. R.1:3-4(c). After filing, you then have five (5) days to serve the Criminal Division Manager with a copy of the notice and sworn proof of the filing of the appeal, along with the filing fee, and a copy must go to the County Prosecutor. If you don’t want to chat with your client—and your carrier—pay heed.

***Judicial Retirement Dinner***  
**Judge John A. Conte**

*Wednesday, June 28th, 6:00 p.m.*  
Seasons Restaurant, Washington Twp.

Reservations \$68.00.  
Contact Joe Randazzo, 201-444-1060.

*I think when you go on trial they should  
have a parrot there that says guilty or  
not guilty for you, as a sort of  
courtesy. Jack Handey, Deep Thoughts.*