Top 20 Cases affecting Municipal Court for 2010
By Kenneth Vercammen, Esq.

1. Breath Test warnings now must be given in Spanish
State v. Marquez 202 NJ 485 (2010)

In this case involving a conviction for refusing to submit to a chemical breath test, the Court holds that New Jersey's implied consent law, N.J.S.A. 39:4-50.2, and refusal law, N.J.S.A. 39:4-50.4a, require proof that an officer requested the motorist to submit to a chemical breath test and informed the person of the consequences of refusing to do so. The statement used to explain to motorists the consequences of refusal must be given in a language the person speaks or understands. Because defendant German Marquez was advised of these consequences in English, and there is no dispute that he did not understand English, his refusal conviction is reversed.

2. If not enough breath supplied on Alcotest, officer must read additional warnings
State v. Schmidt
194 NJ Super. 214 (App. Div. 2010)

In this opinion the court held that (1) the police are required to comply with N.J.S.A. 39:4-50.2(e) by reading the standard language concerning the consequences of a refusal to take an Alcotest (part two of the Standard Statement) when a defendant unequivocally agrees to submit to an Alcotest but then fails without reasonable excuse to produce a valid sample and (2) the police have the discretion to discontinue the Alcotest and charge the arrestee with refusal without affording the arrestee the maximum eleven attempts that the Alcotest machine permits.

3. Prior refusal may count for 3rd DWI
State v Ciancaglini
411 NJ Super. 280 (App. Div. 2010) cert granted

In this appeal from a DWI conviction, after prior separate DWI and refusal convictions, this Appellate panel disagrees with the holding of State v. DiSomma 262 N.J. Super. 375 (App. Div. 1993), and hold that the prior refusal conviction does count toward making this a third offense. The court feels this holding is consistent with a line of cases both before and after DiSomma concluding that a prior DWI conviction counts toward enhancement of the sentence imposed for a refusal conviction. See, e.g., State v. Tekel, 281 N.J. Super. 502 (App. Div. 1995). The court also held that double jeopardy does not bar reinstatement of the sentence originally imposed in the municipal court for a third DWI offense, which was reduced in the Law Division to a sentence for a first DWI offense.

4. Discovery expanded for speeding tickets

State v Green __ NJ Super. __ A-6199-08T4 11-09-10

In this case, the court decided that a motorist who has been charged with speeding is entitled to discovery respecting

(1) the speed-measuring device's make, model, and description; (2) the history of the officer's training on that speed-measuring device, where he was trained, and who trained him;

(3) the training manuals for the speed-measuring device and its operating manuals;

(4) the State's training manuals and operating manuals for the speed-measuring device;

(5) the officer's log book of tickets written on the day of defendant's alleged violation;

(6) the repair history of the speed-measuring device used to determine defendant's speed for the past twelve months; and

(7) any engineering and speed studies used to set the speed limit at the section of highway where defendant's speed was measured.

The court also found that the Stalker Lidar speed-measuring device had not been proven to be scientifically reliable and, as such, the results of its operation should not have been admitted during the municipal court proceedings or considered by the Law Division. The court remanded the matter to the Law Division for a plenary hearing on the scientific reliability of the Stalker Lidar. If it is determined to be reliable, then the matter is remanded to the municipal court for trial after the State has provided all of the discovery required by this opinion.

5. School Principal may search vehicle on school grounds.

State v. Best 201 NJ 100 (2010)

A school administrator need only satisfy the lesser reasonable grounds standard rather than the probable cause standard to search a student's vehicle parked on school property

6. Error by police dispatcher regarding invalid arrest warrant requires suppression of evidence under NJ Constitution.
State v. Handy
412 NJ Super. 492 (App. Div. 2010)

This appeal required the Court to determine whether evidence found during the search incident to defendant's arrest should have been suppressed because the dispatcher who incorrectly informed the arresting officer that there was an outstanding arrest warrant acted unreasonably under the circumstances, even though the conduct of the arresting officer himself was reasonable.

The warrant at issue, which was ten years old at the time, had the same birth month, but a different birth day and year. The first name on the warrant was a variant spelling of defendant's first name. The court concluded that suppression is required and, consequently, reversed the conviction based on NJ Constitution.

7**. Passengers can be ordered out if belief of danger.**
State v. Mai 202 NJ 12 (2010)

The officers presented sufficient facts in the totality of the circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to exit the car. Those same circumstances authorize a police officer to open a vehicle door as part of ordering a passenger to exit. Thus, the seizure of the weapon was proper under the plain view doctrine, and the seizure of the holster and loaded magazine from the passenger was lawful as the fruits of a proper search incident to an arrest.

8. **No Warrantless Search of Truck Sleeper Compartment based on smell of weed. State v. Pompa** 414 NJ Super. 219 (App. Div. 2010)

Following his conviction of various drug offenses, defendant appealed the denial of his motion to suppress in excess of thirty pounds of marijuana seized by police without a warrant from a closet in the sleeper cabin of defendant's tractor trailer. The court held that the closely regulated business exception permitted a warrantless administrative inspection of certain areas of the tractor-trailer, but concluded that the search turned unlawful when it progressed into unregulated areas without the exigent circumstances required by State v. Pena-Flores 198 N.J. 6, 28 (2009).

9. Police cannot search home without warrant.
State v. Jefferson
413 NJ Super. 344 (App. Div. 2010)

(1) In the absence of a warrant or a recognized exception from the Fourth Amendment's warrant requirement, the police could not lawfully enter

defendant's home to conduct a Terry type detention and investigation of defendant.
(2) A police officer's wedging herself in the doorway to prevent defendant from closing his front door was entry into the home.
(3) The police failed to show either "hot pursuit" exigent circumstances or a community caretaking exception from the warrant requirement.
(4) Although the police entry was unlawful, defendant had no right to resist physically, and the search of his person incident to arrest was lawful.
(5) Consent to search defendant's apartment, given by defendant's wife, was tainted by the unconstitutional police conduct and was not shown to be voluntary.

10 Judge Can Suspend DL for Willful Traffic Offense.
State v. Moran 202 NJ 311 (2010)

The license suspension provision of N.J.S.A. 39:5-31, which is published in the Motor Vehicle Code of the New Jersey Statutes Annotated, is not "hidden," and defendant, like all motorists, is presumed to know the law. To ensure that license suspensions meted out pursuant to N.J.S.A. 39:5-31 are imposed in a reasonably fair and uniform manner, so that similarly situated defendants are treated similarly, the Court today defines the term "willful violation" contained in N.J.S.A. 39:5-31 and enunciates sentencing standards to guide municipal court and Law Division judges

11 Defense counsel must advise criminal of deportation consequences.
Padilla v. Kentucky 130 S. Ct. 1473 (2010)

Petitioner Padilla, a lawful permanent resident of the United States for over 40 years, faced deportation after pleading guilty to drug-distribution charges in Kentucky. In post conviction proceedings, he claimed that his counsel not only failed to advise him of this consequence before he entered the plea, but also told him not to worry about deportation since he had lived in this country so long. He alleged that he would have gone to trial had he not received this incorrect advice The US Supreme Court held because counsel must inform a client whether his plea carries a risk of deportation, Padilla has sufficiently alleged that his counsel was constitutionally deficient.

12. Defendant must invoke right to remain silent.
Berghuis v. Thompkins 130 S. Ct. 2250 (2010)

Defendant Thompkins' silence during the interrogation did not invoke his right to remain silent. A suspect's Miranda right to counsel must be invoked "unambiguously." Davis v. United States, 512 U.S. 452, 459. Had Thompkins said that he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the questioning. He did neither.

13. OPRA limits copy fees to actual costs

Smith v. Hudson County 411NJ Super 538 (App. Div.2010)

Plaintiffs asserted in these three lawsuits that defendants have overcharged them, and other members of the public, for the copying of government records maintained at County offices, in violation of N.J.S.A. 47:1A-5(b) within the Open Public Records Act ("OPRA"), and the common law. The Appellate Division reversed the trial courts' orders dismissing plaintiffs' complaints.

The court construed N.J.S.A. 47:1A-5(b) to require that, unless and until the Legislature amends OPRA to specify otherwise, or some other statute or regulation applies, the Counties must charge no more than the reasonably-approximated "actual costs" of copying such records. The burden of proving or disproving compliance with that "actual cost" mandate will vary, depending upon whether the charges in question exceed certain fee levels identified in the second sentence of N.J.S.A. 47:1A-5(b).

14. DWI defendants entitled to Alcotest machine data State v Maricic ___ NJ Super. __ (App. Div. 2010) A-5247-08T4 8/31/2010 In this DWI matter, the Court held that defendant has the right to discover downloaded Alcotest results from the subject instrument from the date of last calibration to the date of defendant's breath test and any repair logs or written documentation relating to repairs of the subject Alcotest machine, without a showing of prior knowledge of flawed procedures or equipment.

15. Plea to indictable offense barred DWI prosecution based on double jeopardy

State v Hand 416 NJ Super. 622 (App. Div. 2010)

In this appeal by the State, the Court determined whether a guilty plea to fourth-degree creating a risk of widespread injury or death, N.J.S.A. 2C:17-2(c), precluded defendant's subsequent prosecution for driving under the influence (DWI), N.J.S.A. 39:4-50. The municipal court judge denied defendant's motion to dismiss the DWI and reckless driving charges on double jeopardy grounds. On appeal de novo to the Law Division, Judge Kryan Connor, citing the "same evidence" test, found defendant's prosecution for DWI and reckless driving was barred. He vacated the guilty pleas and dismissed the charges.

16. Mun Court not bound by another court order that dwi conviction could not be used for enhanced penalty State v Enright 416 NJ Super. 391 (App. Div 2010)

After defendant's conviction and sentence in the municipal court as a third-time DWI offender, he obtained a post-conviction order from a different municipal court in which his second DWI conviction had occurred confirming that conviction but directing that no court could use it to enhance his sentence on a subsequent DWI conviction. The Court held that the municipal court order was an erroneous application of State v. Laurick, 120 N.J. 1, and that on de novo review of the third DWI conviction, the Law Division correctly declined to follow the municipal court's order.

17 Police Could Not Lift Up Shirt for Terry Frisk. State v. Privott 203 NJ 16 (2010)

Based on the totality of the circumstances, there were specific and particularized reasons for the officer to conduct an investigatory stop and to frisk defendant Privott. However, the officer's conduct in lifting defendant's shirt exceeded the scope of a reasonable intrusion that is permitted as part of a Terry stop.

18. Abandoned Bag Permits Search. State v. Carvajal 202 NJ 214 (2010)

The State satisfied its burden of proving by a preponderance of the evidence that the duffel bag was abandoned. Carvajal denied having any ownership or possessory interest in the bag, and the police attempted to identify other potential owners. Carvajal therefore had no standing to challenge the warrantless search of the bag.

19. **Once impounded, the police were required to obtain a warrant before searching the vehicle. State v Minitee**
415 NJ Super. 475 (App. Div. 2010) In these back-to-back appeals concerning the warrantless search of a motor vehicle, the court harmonized the seemingly inconsistent holdings in State v. Martin, 87 N.J. 561 (1981) and State v. Pena-Flores, 198 N.J. 6 (2009), by finding that the exigent circumstances that existed at the scene only permitted the police to seize the vehicle. Under our State's Constitution, once impounded, the police were required to obtain a warrant before searching the vehicle.

20. Supreme Court affirms constitutionality of Domestic Violence Act. Crespo v. Crespo 201 NJ 207 (2010)

The Prevention of Domestic Violence Act is constitutional. Judgment of the Appellate Division is affirmed substantially for the reasons expressed in the thorough opinion of Judge Fisher. Note – Judge Fisher wrote that discovery can be ordered by Trial Judge. Although this case deals primarily with Domestic Violence, the discovery aspect is important where there are simultaneous

pending cases in Municipal Court and family court.

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