

***Recent Cases:***

**Court cannot consider Sup Mt testimony unless agreed by defendant. State v Gibson \_\_ NJ Super. \_\_ (App. Div. 2013) A-5163-10T2**

The court held that in a driving-under-the-influence prosecution, N.J.S.A. 39:4-50, due process and fundamental fairness preclude a trial court, absent a defendant's consent, from relying upon the evidence heard in a pre-trial suppression hearing as proof of guilt in the trial on the merits. In this case, defense counsel objected to reliance on the suppression hearing record and moved to dismiss in the absence of other proofs. The court nonetheless found defendant guilty of DUI solely on the basis of evidence elicited at the pre-trial hearing to suppress the fruits of a motor vehicle stop and subsequent arrest. The court reversed the conviction and order entry of a judgment of acquittal.

**Bias statute requires proof of defendant intended bias, not victim perception. State**

**v. Pomianek 429 NJ Super. 339 (App. Div. 2013)**

The court construed one section of the bias intimidation statute, which defendant challenged as unconstitutional. The court held that a conviction under N.J.S.A. 2C:16-1a(3) requires proof of the defendant's biased intent in committing the predicate crime; proof of the victim's perception of the crime is insufficient for a conviction. That construction is consistent with the legislative history and necessary to avoid holding the statute unconstitutional.

The court also construed the official misconduct statute, N.J.S.A. 2C:30-2a, holding that under the facts of this case defendant could be re-tried for official misconduct based on harassment by conduct but not harassment by communication.