

## **Spring 2008 Municipal Court Law Review**

### **1. If property not abandoned, defendant has standing to challenge Search. State v. Johnson \_\_\_ NJ \_\_\_ (Decided February 26, 2008) A-81-06**

Defendant has standing under state law to challenge the warrantless search of the duffel bag in the home in which he was present, and the fruits of the search are suppressed for failure to comply with the warrant requirements of Article I, Paragraph 7 of the New Jersey Constitution.

Although defendants are provided automatic standing when the seized property satisfies an element of the charged offense, if the State can show that the property was abandoned, a defendant will have no right to challenge the search or seizure of the property.

### **2. PTI available if thefts not part of enterprise. State v. Watkins, III \_\_\_ NJ \_\_\_ (Decided February 21, 2008) A-118-06**

At issue in this appeal is the meaning of Guideline 3(i)(2) of Rulee 3:28, which applies a presumption against admission into Pretrial Intervention (PTI) where the criminal conduct is "part of a continuing criminal business or enterprise."

Individuals acting alone in furtherance of their own criminal interests who commit a series of offenses such as thefts or forgeries are not "part of a continuing business or enterprise" because they are not parin concert with others.

### **3. Police do not need a reasonable suspicion before they may access the NCIC database. State v. Sloane 193 NJ 423 (2008)**

During a motor vehicle stop, the passenger, like the driver, is seized under the federal and state constitutions. Police do not need a reasonable suspicion before they may access the NCIC database and, because accessing the NCIC database was within the scope of the traffic stop and did not unreasonably prolong the stop, there was no basis to suppress the evidence found.

### **4. Constructive possession of CDS is jury question. State v. Scott 193 NJ 227 (2008) Approved for Publication January 28, 2008.**

The primary issue in this case was whether defendant actually or constructively possessed cocaine that was found in the vehicle in which he was a passenger. With one judge dissenting, the court affirmed the trial court's decision to deny defendant's

motion for acquittal and his motion for a new trial. But the court remanded for a determination regarding the voluntariness of statements attributed to defendant and for resentencing.

1-10-08 State v. Morgan Scott (A-115-06)

Possession cannot be based on mere presence at the place where contraband is located. There must be other circumstances or statements of defendant permitting the inference of defendant's control of the contraband."

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in the Appellate Division's majority opinion.

**5. The filing of Tort Claims notice does expungement. In the Matter of Expungement Petition of J.R.S. 398 NJ Super. 1 (App Div. 2008)**

Petitioner appeals from the order of the Law Division vacating a previously entered judgment of expungement. Before filing the expungement application, petitioner sent a TCA tort claims notice to the State regarding the subject matter of the expungement. After the expungement was granted, petitioner commenced a civil suit against the State.

The court rejected the State's argument that petitioner's filing of a TCA tort claims notice constituted the commencement of "civil litigation" against a public entity, triggering the statutory bar against the granting of an expungement petition contained in N.J.S.A. 2C:52-14(d). The court also found no statutory support for the State's argument that enforcement of the expungement judgment deprives the State of information needed to defend itself against plaintiff's allegations of wrongdoings.

**6. States can permit Post Conviction Motions in cases before 2004 based on Crawford Hearsay Challenge. Danforth v. Minnesota 128 S. Ct 1029 (2008)**

Teague v. Lane, 489 U. S. 288 (1989), limits the kinds of constitutional violations that will entitle an individual to federal habeas corpus relief, but does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed "nonretroactive" under Teague.

**7. Search warrant must be based on judge decision, not police discretion. State v. Marshall 398 NJ Super. 92 (App. Div. 2008)**

A judge issued a search warrant for an apartment in a multiple unit structure but required that the police further investigate which of two apartments was allegedly involved in criminality; he did not require that the police return with this additional, necessary information, but instead issued the warrant on the condition that it not be executed until that additional information was obtained. The court concluded that this process violated the constitutional requirement that a search warrant be issued by a "neutral and detached magistrate" because the judge ceded his authority to the discretion of the police.

The State also argued that the warrant was sufficient insofar as it had authorized the police to search whichever apartment was "controlled" or "possessed" by a particular person. The court held that this loose description did not conform to the constitutional requirement that the place to be searched be "particularly describe[d]" in the warrant.

**8. Car passenger has no special duty to prevent intoxicated person from driving. Champion v. Dunfee 398 NJ Super. 112 (App. Div. 2008)**

The court held that a guest passenger who neither owns nor controls the motor vehicle, who enjoys no special relationship to, and has not substantially encouraged the wrongful behavior of, the actual tortfeasor, owes no affirmative duty to a fellow passenger to prevent his own automobile.

**9. Father's right to an attorney must be honored. NJ DYFS v. R.G. 397 NJ Super. 439**

The trial court must appoint counsel to represent indigent litigants during all proceedings in an abuse and neglect case.

A permanency hearing is not required when a child is placed in the physical custody of a non-abusive parent.

**10. Parking garage is quasi-public area so refusal to take breath test can be charged. State v. Bertrand Law Division, Hudson County, Municipal Appeal No. 58-07, December 4, 2007, not approved for publication.**

Following a trial de novo, the Law Division determined that the defendant was guilty of refusal to submit to a Breathalyzer test in violation of N.J.S.A. 30:4-50.2; the police received a report of an intoxicated driver in the parking garage at a cooperative apartment complex; the officers found the defendant, who was a resident of the complex, sleeping on a bench about 40 feet from his vehicle, which matched the description of the vehicle in the report; §39:4-50.2 provides that any person who operates a vehicle "on any public road, street or highway or quasi-public area" is deemed to have given consent "to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood"; the parking garage was a "quasi-public area"; thus, the requirement that the defendant submit to a Breathalyzer test did not violate his constitutional rights.

Source: NJ Lawyer Daily Briefing [dailybriefing@njsba-njldailybriefing.com](mailto:dailybriefing@njsba-njldailybriefing.com)

**11. New law reduces penalties for driving while suspended if suspension is for parking ticket or minor offense.**

In October, 2007 Governor Corzine Signed Legislation which clarifies that a person whose license has been suspended for failure to comply with a time payment order or for failure to respond to or pay a parking judgment is not subject to the same penalties as a person whose license has been suspended for a driving related offense.

Under prior law, failure to comply with a time payment order and failure to respond to or pay a parking judgment are codified as serious driving related offenses. Offenders are subject to fines that are not commensurate with the offense. For example, under the current law, a person whose license was suspended twice for failure to pay a parking ticket would be subject to the penalties set forth in N.J.S.A.39:3-40 b. which includes imprisonment for not more than 5 days and a fine of \$750. It was the sponsor's belief that this penalty is not appropriate for an offense such as failure to pay or respond to a parking ticket.

The law further clarifies that a person who commits a second offense of driving with a suspended license must spend at least one day imprisoned in a county jail. The bill also makes technical amendments.

The New law states: If the violator's driver's license to operate a motor vehicle has been suspended pursuant to section 9 of P.L. 1985, c.14 (C.39 :4-139.10) or for failure to comply with a time payment order, the violator shall be subject to a maximum fine of \$100 upon proof that the violator has paid all fines and other assessments related to the parking violation that were the subject of the Order of Suspension, or if the violator makes sufficient payments to become current with respect to payment obligations under the time payment order.

For details on fines & jail, go to: [www.njlaws.com/traffic\\_minimum\\_penalties.htm](http://www.njlaws.com/traffic_minimum_penalties.htm)

Major recent changes in Court Rules:

- Private prosecutors prohibited
  - Post conviction motions must be filed within 5 years
- More details on website: [www.benotguilty.com](http://www.benotguilty.com)

## **12. Governor Jon S. Corzine signed the following bills into law January, 2008**

S-721/A-2144 (Inverso, Girgenti/Greenstein) – Establishes owners responsibility to provide information relating to certain motor vehicle accidents.

[If enough space, include blog stuff below...]

New Web Blogs aka LawBlawgs on criminal law

NJ Criminal Law

<http://njcriminallaw.blogspot.com/>

Law Enforcement caselaw

<http://lawenforcementcaselaw.blogspot.com/>

Editor- Michael Rowan, a Law Student at Hofstra Law and High School valedictorian

NJ Elder Law

<http://elder-law.blogspot.com/>

Juvenile Justice  
<http://juvenile-justice-codes.blogspot.com/>

NJ Traffic Laws  
<http://njtraffic.blogspot.com/>

Criminal Articles  
<http://criminalarticle.blogspot.com/>

Wills & Estate Administration  
<http://njwills.blogspot.com/>

Motor Vehicle Articles  
<http://njmotorvehicle.blogspot.com/>

Criminal Statutes and Jury Charges and in New Jersey  
<http://criminal-jury.blogspot.com/>

NJ Laws Newsletters by Kenneth Vercammen  
<http://njlaws1.blogspot.com/>

NJ Traffic Law & Municipal Court  
<http://traffic-law.blogspot.com/>

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