Mun law Rev Summer 2008 REV 6/30/08 EMAC

1. Statement by eye witness not admissible as emergency investigation. State in the Interest of J.A. ___ NJ ___ (Decided 6-23-08) A-2-07

The hearsay statements were a narrative of past events and made while neither the declarant nor victim was in imminent danger. The statements were testimonial and, because the declarant was not produced as a witness or subject to cross-examination, the admissions of the statements violated J.A.'s Sixth Amendment right to confront the witnesses against him.

2. Statement to DYFS worker under emergency is admissible. State v. Buda ___ NJ ___ (Decided 6-23-08) A-4/5-07

The trial court did not abuse its discretion in determining that the child's statements to his mother and the DYFS worker were properly admitted into evidence as "excited utterances" under N.J.R.E. 803(c) (2). The Child's statements were not testimonials and, hence, their admission at trial did not run afoul of the Confrontation Clause.

3. Crawford Hearsay Rule does not apply to Breathalyzer Certification. State v. Sweet ___ NJ ___ (Decided 6-23-08) A-1-07

The ampoule testing certificates and the breath testing instrument inspection certificates are hearsay statements admissible under the business records exception to the hearsay rule. Those records also are nontestimonial and thus are admissible under the Confrontation.

4. Step Down Post Conviction Relief must be filed in Original Court. State v. Schadewald 400 NJ Super. 350 (App. Div. 2008)

A defendant convicted of a second or subsequent offense of driving while intoxicated (DWI), N.J.S.A. 39:4-50, who seeks a step-down in sentence on the ground that one or more of the prior convictions were uncounseled, pursuant to State v. Laurick, 120 N.J. 1, cert. denied, 498 U.S. 967, 111 S. Ct. 429, 112 L. Ed. 2d 413 (1990), must first petition for post- conviction relief (PCR) in the municipal court in which the prior uncounseled conviction occurred. The PCR proceedings in municipal court are governed by Rule 7:10-2(f) and (g).

5. No Expungement if two prior crimes. Expungement Petition of Ross 400

NJ Super. 117 (App. Div. 2008)

The expungement statute, N.J.S.A. 2C:52-2, permits expungement of an indictable conviction only if the petitioner "has not been convicted of any prior or subsequent crime." The court construed the statute and held that if a petitioner commits two crimes at different times, he is precluded from seeking expungement even if he is sentenced and convicted for the two crimes on the same day.

6. One car accidents not always an "At Fault Accident". Reilly v. AAA-Mid-Atlantic Ins. Co. 194 NJ 474 (2008)

The Department of Banking and Insurance's application of its regulations to assign insurance eligibility points to an insured for an accident in which the insured was not negligent or culpable exceeded the scope of its statutory authority.

7. Police cannot access defendant's Internet records. State v. Reid 194 NJ 386 (2008)

Pursuant to Article I, Paragraph 7, of the New Jersey Constitution, the Court holds that citizens have a reasonable expectation of privacy in the subscriber information they provide to Internet service providers. Accordingly, the motion to suppress by defendant Reid was properly granted because the police used a deficient municipal subpoena. Law enforcement officials can obtain subscriber information by serving a grand jury subpoena on an Internet service provider without notice to the subscriber. The State may seek to reacquire the information with a proper grand jury subpoena because records of the information existed independently of the faulty process used by the police, and the conduct of the police did not affect the information.

8. In DWS, uncounseled prior plea cannot enhance jail. State v. Thomas ___ NJ Super. ___ (Law Div. Decided _____ __, 2007) 14-3-0515

No defendant may be sentenced to an increased period of incarceration for any offense on the basis of a prior un-counseled conviction. Source: 192 N.J.L.J. 574.

9. Commercial Vehicle could be searched during routine safety inspection. State v. Hewitt 400 NJ Super. 376 (Law Div. 2008) 14-2-0533

The trooper's warrantless search of commercial truck to confirm a suspected hidden compartment and identify its contents, made during a routine safety inspection, was a valid administrative search. Source: 192 N.J.L.J. 570.

10. Where crime involved employer's car, no extreme hardship to avoid license suspension. State v. Carrero 399 NJ Super. 419 (Law Div. 2007)

Loss of employment is not an "extreme hardship" entitling a defendant to relief from mandatory license suspension under N.J.S.A. 2C:35-16(a) where the loss is the result of his unauthorized, criminal use of his employer's vehicle. Source: 192 N.J.L.J. 134.

11. PTI Rejection based on mental illness ok. State v. Hoffman 399 NJ Super. 207 (App. Div. 1999)

In this appeal, the court reversed an order admitting defendant into a Pretrial Intervention program over the prosecutor's objection. The court concluded that the victims' status as police officers does not eviscerate N.J.S.A. 2C:43 12(e)(4), which requires prosecutors to consider "[t]he victim to forego prosecution."

12. Search of duffel bag in home must comply with NJ Constitution. 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.

13. Police may have immunity for a criminal arrest made in their presence. Virginia v. Moore 128 S.Ct. 1598 (2008) No. 06-1082

In a case raising the issue of whether a police officer violates the Fourth Amendment by making an arrest based on probable cause but prohibited by state law, the Supreme Court rules that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and that while states are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment's protections.

14. 30 year old uncounseled DWI Conviction could not enhance jail. State v. Binkiewicz 78 NJ 397 (App. Div. Decided May 6, 2008) A5613-06T4, Unpublished.

Where defendant's first conviction for a DWI occurred more than 30 years ago, his testimony and certification that he did not know that he was entitled to counsel and was not asked if he wanted an adjournment to obtain counsel is sufficient under *Laurick* to establish that the conviction was uncounseled. Having found that the conviction was uncounseled, and since subsequent convictions exceeded the 10-year time span under N.J.S.A. 39:4-50(a)(3), the judge correctly applied the step-down provision and sentenced defendant as a second offender with respect to incarceration but as a third offender with respect to the administrative penalties after he pleaded guilty to his third DWI conviction.
Source: 192 N.J.L.J. 412

15. No automobile search exception if no exigent circumstances. State v. Owens (App. Div. Decided March 28, 2008) 14-2-0078, Unpublished.

On the state's appeal from a Law Division order that suppressed drug evidence seized following a warrantless search of an automobile, the appellate court affirms. Although the judge found that the police had probable cause not only to detain and arrest defendant, but also to search the vehicle, she concluded that the state failed to prove that the search fell within any of the exceptions to the warrant requirement. Particularly, she determined that (1) the search-incident-to-arrest exception was inapplicable because defendant had been detained in a courtyard, and then brought to the motor vehicle while in custody; (2) the automobile exception did not apply because, although the police had probable cause, there was an absence of exigent circumstances justifying the warrantless search; and, finally, (3) the drugs were not in plain view.
Source: 192 N.J.L.J. 53

16. No Restraining Order where calls are not harassing. A.G. v. R.A.C (App. Div. Decided May 12, 2008) 14-2-0471, Unpublished.

The trial court erred in granting a final restraining order because defendant's four phone calls over four weeks after the parties ended their dating relationship, which were not anonymous, offensively coarse or made at extremely inconvenient times, do not establish harassment under N.J.S.A. 2C: 33-4a.
Source: 192 N.J.L.J. 473

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Photos

1. Edison Presiding Judge, Emery Toth was the speaker for the NJSBA Municipal Court Section.

2. Gil Snowden was a speaker at the NJSBA Annual Meeting.

3. Arnold Fishman and Jeff Gold NJSBA Municipal Court Attorney Winner.

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Kenneth Vercammen is the 2008 Municipal Court Attorney of the Year by the Middlesex County Bar Association. He was selected one of only three attorneys as a Super Lawyer 2008 in NJ Monthly in the Criminal – DWI category. Kenneth Vercammen was the NJ State Bar Municipal Court Attorney of the Year and past president of the Middlesex County Municipal Prosecutor's

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