

1. Driver is not subject to criminal driving while suspended if DWI suspension period expired prior to driving

State v Perry ___ NJ Super. ___ (App. Div. 2015) Docket A-1767 -13T2

N.J.S.A. 2C:40-26(a) and (b) make driving while suspended under specified circumstances a fourth-degree crime, punishable by a mandatory minimum jail term of 180 days, where the underlying suspension arose from driving while intoxicated (DWI), N.J.S.A. 39:4-50, and/or refusal to submit to chemical testing, N.J.S.A. 39:4-50.4(a). The court concluded in these appeals that prosecutions under the statute can be brought only if the act of driving while suspended occurs during the court-imposed term of suspension.

Note- Ken V successfully represented four of the winning parties before the Law Division. The Appellate Division affirmed the well-reasoned opinion of Hon. Douglas Wolfson JSC.

2. Court permits police to ignore guidelines requiring Alcohol influence report be given to DWI suspects

State v Sorensen ___ NJ Super. ___ (App. Div. 2015) A-3797-13T4

After the Law Division suppressed defendant's blood alcohol content (BAC) results, it sentenced her on her guilty plea to driving under the influence. Nonetheless, the State's appeal of the suppression was not barred by double jeopardy because defendant had entered a conditional plea to, and been sentenced for, the per se violation in Municipal Court.

The Law Division suppressed the BAC results because the Alcotest operator did not give a copy of the Alcohol Influence Report (AIR) to the arrestee in the police station. Although *State v. Chun*, 194 N.J. 54, 82 (2008), said the operator "must" do so, that comment about recommended Alcotest procedure did not override the statutory standard only requiring the police to give a copy of the breath test results upon request. N.J.S.A. 39:4-50.2(b). In any event, the timing of copy delivery does not affect the validity of the test results. Moreover, police must advise arrestees of their ability to request a copy and to get an independent test. Therefore, suppression is not warranted in the absence of prejudice. Furthermore, a suppression remedy should not be imposed retroactively.

Judge Sabatino concurs in the result. Given the time-sensitive dissipation of alcohol in the bloodstream, he believes *Chun* sensibly requires the operator to provide a copy of the AIR contemporaneously, consistent with the policies of the Attorney General and the State Police, and that the statute does not foreclose affording such added procedural protection to tested drivers. He agrees that suppression in this case and retroactive relief are not warranted.

3. No home release or wristlet if mandatory 180 jail

State v Harris 439 NJ Super. 150 (App. Div. 2015)

Following the recent opinion in State v. French, 437 N.J. Super. 333 (App. Div. 2014), the court hold that a defendant convicted of violating either N.J.S.A. 2C:40-26a or N.J.S.A. 2C:40-26b must be sentenced to at least 180 days in jail without parole. French held that a sentence to an in-patient drug rehabilitation program in lieu of jail was an illegal sentence under section 26b. The court conclude that, under section 26a or 26b, a sentence to any other non-custodial alternative program, such as a home detention program (HEDS) or a community service program (CSLS), is likewise illegal.

4. Private prosecutor not permitted unless municipal prosecutor unable to prosecute State v Myerowitz __ NJ Super. __ (App. Div. 2015) A-6032-12T2

Defendant appealed from the judgment of the Law Division finding him guilty of harassment after conducting a de novo review of the trial record developed in the municipal court. The Court reversed and held defendant's conviction in the municipal court was void ab initio because he was prosecuted by a private attorney who did not comply with the requirements in State v. Storm, 141 N.J. 245 (1995) and codified in Rule 7:8-7(b). Without cross-complaints from complaining witnesses there are no legal grounds to permit a private attorney to represent the State. Public policy favors prosecutions conducted by independent prosecutors. A municipal court judge should obtain an on-the-record statement confirming the prosecutor's recusal in the case. However, if the municipal prosecutor insists on proceeding with the prosecution, the prosecutor's decision should be final. Use of the form approved by the Administrative Director of the Courts is not discretionary. The questions contained therein, including the precise phraseology used, constitutes the expressed method adopted by the Supreme Court to accommodate the public policy concerns expressed in Storm.

5. Court Says Pot Odor, Gun Reports Did Not Justify Search State v. Samuell App. Div. unreported 11-07-0710 decided February 25, 2015

Defendant, indicted on multiple counts charging the possession of marijuana with intent to distribute and firearms offenses, appealed his conviction by guilty plea to fourth degree possession of more than 50 grams of marijuana entered after the trial court denied his motion to suppress. The panel reversed, finding that under the circumstances, the police officer contravened constitutional prohibitions when he jumped over the fence surrounding the backyard of a private residence and came up on the back porch to detain an occupant of the house who had come out on the back porch because the officer did not have probable cause to believe that that person was committing a firearms offense or an indictable marijuana offense and the officer's reasonable and articulable suspicion of criminal activity did not authorize the police to enter private property to further their investigation and the state made no showing of an exception to the warrant requirement when the officer jumped the fence. The panel concluded that because the police observation of additional evidence in plain view and

the evidence seized pursuant to the search warrant were the fruits of the initial unlawful entry, the evidence should have been suppressed. Source DailyBriefing New Jersey Law Journal *February 26, 2015*

6. ALJ can reduce suspension proposed by MVC Bamfo v. New Jersey Motor Vehicle Commission App. Div. unreported docket A-1110-13T2 decided Jan. 8, 2015

Bamfo appealed from a final decision of the Motor Vehicle Commission suspending his driver's license for 30 days because he was convicted of a moving violation while his license was on probationary status as a result of prior violations. Affirming, the panel found that the MVC had applied the applicable statutes and regulations in determining that a suspension was required because of Bamfo's record of moving violations and that the period of suspension, which had been reduced from 90 days, was an appropriate accommodation of his hardship request (that his job required that he drive and he might lose the job), and that Bamfo had provided no ground for the court to disagree with the MVC's decision. Daily Briefing is a member benefit of the NJ State Bar Association. More benefits can be found at www.njsba.com.

7. Lawyer Had No Duty to Disclose Client's possible Indictable Offense State v. Kane App. Div. docket 12-07-0449 unreported decided February 17, 2015

A lawyer whose client pleaded guilty in municipal court to the traffic offense of driving with a suspended license was not obligated to inform the judge and prosecutor that the client was subject to indictment and harsher penalties because her license had been suspended for drunken driving, a New Jersey appeals court has held. The court, however, faulted the lawyer, Steven Kaplan, for having his client, Davi Kane, later withdraw the guilty plea without explaining to her that she would lose her protection against double jeopardy and be exposed to prosecution for a fourth-degree crime carrying a minimum half-year in jail, which is what eventually occurred. Source *New Jersey Law Journal* February 25, 2015

8. Ken V now Certified Municipal Court Law Attorney

Kenneth Verammen passed the test to be designated as a "Certified Municipal Court Law Attorney" by the NJ Supreme Court. He is part of the first group of attorneys ever been found qualified by the Board, and authorized to designate themselves as Municipal Court Law Attorneys before the public, the bar, and the courts of this State in accordance with the Rules of this Court during their good behavior for a term of five years from the date of this Order, as announced by Stuart Rabner Court Justice.

Metuchen Municipal Court help: Ken also was sworn in again as Metuchen Public Defender. Court typically sits Wednesday Night. If an attorney needs coverage

Metuchen fax our office 732-572-0030 and we will try to help.

9 Next legal events

April 20 Nuts and Bolts of Elder Law ICLE NJ Law Center

May 6, 2015 Expungement Criminal Arrests and conviction Seminar at Ken Vercammen's Law office for person previously charged with offenses and their family who are concerned about the old criminal charges of their children.

May 10-16 National Police Week free Wills for Heroes prepared in May

10. July 17 Summer Blast Happy Hour at Bar Anticipation

You are invited....

Kenneth Vercammen Law Office

30th Anniversary Party

"Celebrating 30 years of providing excellent service to clients and the community"

1985-2015

Happy Hour, Client & Community Appreciation. Open to the public

Food, Refreshments, T- shirts and special gifts

at Bar Anticipation

703 16th Avenue Lake Como/ Belmar, NJ 07719

Free !

5:30-7:30PM Hot & Cold Buffet

The reduced price Happy Hour is 6-7PM with \$1.50 House Drink, Bud/BudLt draft & House Wine Special

Please bring a canned food donation for a community food bank, continuing to provide food and help to individuals in need.

Email Ken Vercammen's Law Office so we can put your name on the VIP list for wristbands. VercammenLaw@Njlaws.com

During the past 30 years I have stayed in touch with the many persons I've had the pleasure of meeting at community activities, running races, Bar Association events and educational seminars. You are invited to our 30th Anniversary Party.

11. Free Office Space for New Attorney and go to Court & Mentor program- Edison, NJ available March 1

Kenneth Vercammen's Law Office has a space sharing opportunity for new lawyer or recent Transitional attorney to get experience and go to court and learn NJ Law office procedures and handle Public Defender cases. This is a mentoring experience where you can learn NJ Law Office Procedure.

Attorney will be provided with use of desk on main floor, plus if needed private office space in furnished basement to start their practice, rent-free. They can see clients in first floor office rooms. In return they will handle municipal court appearances, Telephone communications with courts, prosecutors, clients, etc, Will signings and other legal work and criminal law website updates in lieu of rent for maximum 5 hours per week.

Go to court and get court experience. Excellent opportunity to jump-start your career. You will get to represent people in Municipal Courts in Middlesex, Union and Monmouth County and meet the top Prosecutors and Judges. Must be admitted in NJ and have a car.

Learn to interview potential Municipal Court/Criminal clients. Also learn to draft Wills and work on Litigation files. Attorney may also help provide legal assistance to members of prepaid legal plans and public defender clients. Follow up contact calls with clients, courts, prosecutors and bar associations.

Excellent mentoring position for the right attorney. Are you hardworking and aggressive? Visit our website: www.njlaws.com to learn about our office.

The following is included with office use:

Desk space

Reception room for clients and use as Bona Fide Office

You can copy and use our Complaints, Motions, Form Letters and Pleadings.

Use our marketing books, marketing CDs, Criminal, Municipal Court and Elder law audiotapes and video library now located in basement

Use of our computer forms Motions, Complaints, and Form letters

Ability to use a file cabinet in basement to store your old files

Lighting/ Utilities

Bathroom Supplies

Landscaping / Snow Removal

Valuable advice

Hot water, municipal water/sewer charge paid

If interested, fax, email or mail a resume and cover letter.

KENNETH VERCAMMEN & ASSOCIATES, PC ATTORNEY AT LAW

2053 Woodbridge Ave. Edison, NJ 08817 (Phone) 732-572-0500

(Fax) 732-572-0030 vercammenlaw@njlaws.com

12. N.J. Municipal Court Law Review SUBSCRIPTION INFO

Please forward a check or voucher for \$20.00 to receive the NJ Municipal Court Law Review. This quarterly newsletter reports changes in New Jersey Court decisions, selected revised motor vehicle and criminal laws, cases, seminars, and information on Municipal Court practice.

Vouchers accepted. Please send a stamped, self-addressed envelope for their return. Multiple subscriptions encouraged.

Please must send a \$20.00 check payable to Vercammen & Associates, PC.

If the law firm or municipality no longer wishes to subscribe, please fax or mail us.

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Kenneth A. Vercammen, Esq.,
Editor- NJ Municipal Court Law Review
2053 Woodbridge Ave.
Edison, NJ 08817
732-572-0500
Tax ID # available

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Kenneth Vercammen is an Edison, Middlesex County, NJ trial attorney where he handles Criminal, Municipal Court, Probate, Civil Litigation and Estate Administration matters. Ken is author of the American Bar Association's new book "Criminal Law Forms" and often lectures to trial lawyers of the American Bar Association, NJ State Bar Association and Middlesex County Bar Association. As the Past Chair of the Municipal Court Section he has served on its board for 10 years.

Awarded the Municipal Court Attorney of the Year by both the NJSBA and Middlesex County Bar Association, he also received the NJSBA- YLD Service to the Bar Award and the General Practitioner Attorney of the Year, now Solo Attorney of the Year.

Ken Vercammen is a highly regarded lecturer on both Municipal Court/ DWI and Estate/ Probate Law issues for the NJICLE- New Jersey State Bar Association, American Bar Association, and Middlesex County Bar Association. His articles have been published by NJ Law Journal, ABA Law Practice Management Magazine, YLD Dictum, GP Gazette and New Jersey Lawyer magazine. He was a speaker at the 2013 ABA Annual meeting program "Handling the Criminal Misdemeanor and Traffic Case" and serves as is the Editor in Chief of the NJ Municipal Court Law Review.

For nine years he served as the Cranbury Township Prosecutor and also was a Special Acting Prosecutor in nine different towns. Ken has successfully handled over one thousand Municipal Court and Superior Court matters in the past 27 years.

His private practice has devoted a substantial portion of professional time to the preparation and trial of litigated matters. Appearing in Courts throughout New Jersey several times each week on Criminal and Municipal Court trials, civil and contested Probate hearings. Ken also serves as the Editor of the popular legal website www.njlaws.com and related blogs. In Law School he was a member of the Law Review, winner of the ATLA trial competition and top ten in class.

Throughout his career he has served the NJSBA in many leadership and volunteer positions. Ken has testified for the NJSBA before the Senate Judiciary Committee to support changes in the DWI law to permit restricted use driver license and interlock legislation. Ken also testified before the Assembly Judiciary Committee in favor of the first-time criminal offender "Conditional Dismissal" legislation which permits dismissal of some criminal charges. He is the voice of the Solo and Small firm attorneys who juggle active court practice with bar and community activities. Recently, the ABA Solo Division has selected Ken to write its new book on "Marketing for the New and Small Firm Attorney". In his private life he has been a member of the NJ State champion Raritan Valley Road Runners master's team and is a 4th degree black belt.

**KENNETH VERCAMMEN
ATTORNEY AT LAW**

2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500