Garden State CLE presents:

"I told you before, NO! You can't do that and a half!"

TWENTY-SIX THINGS YOU CAN'T DO IN MUNICIPAL COURT...

(and how to do them anyway.)

Lesson Plan

1/2 - You cannot be compelled by the prosecutor to stipulate to P/C.

OPINION 661 (1992)

When there is no probable cause, the introduction of RPC 3.8(a) unequivocally applies: The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause[.] Requiring a defendant to acknowledge the existence of probable cause in no way vitiates the obligation of the prosecutor not to prosecute when probable cause does not exist. That duty is absolute and unconditional. A defendant's uninformed - or informed - view on probable cause cannot relieve the prosecutor of the duty to assure that probable cause is present.

Even if there exists probable cause in the subjective opinion of the prosecutor, it is improper for the prosecutor to insist upon a defendant's acknowledgment of the existence of probable cause. A defendant's acknowledgment of the existence of probable cause is irrelevant to both the purpose and the propriety of a plea bargain. The true purpose for such a question can only be to enhance law enforcement's position unfairly or to relieve the prosecutor improperly of the obligation to ascertain the existence of probable cause. Requiring an affirmative answer to this first question is thus improper.

The issues of whether it is proper for a prosecutor to demand an acknowledgment that excessive force was not used and to require waiver or release of civil rights claims are separate and distinct from the issue of waiving probable cause. We start with the well-established obligation of the prosecutor: The primary duty of a prosecutor is not to obtain convictions but to see that justice is done. ***State v. Farrell***, 61 ***N.J.*** 99, 104 (1972). Thus, "[I]t is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

1. <u>The defendant cannot appeal the denial of a motion to suppress evidence on an interlocutory basis.</u>

- **(c) Order; Stay.**
  - **(1) Order Granting Suppression.** An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.
  - **(2) Order Denying Suppression. <u>An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.</u>**

Available options are: Plead guilty, go to trial, run away or just completely ignore the Rule like everyone did in State v. Woodruff, 403 NJ Super. 620 (Law Div. 2008).

And one more thing....

Don't use conditional pleas when you lose an MTS - issues are preserved automatically. See Rule 7:6-2(c)

(c) Conditional Pleas. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).

2. You cannot file a municipal appeal out of time.

3:23-2. Appeal; How Taken; Time

The defendant, a defendant's legal representative, or other person aggrieved by a judgment of conviction, or the defendant or State, if aggrieved by a final post-judgment order entered by a court of limited jurisdiction, shall appeal therefrom by filing a notice of appeal with the clerk of the court below within ***20 days*** after the entry of judgment.

1:3-4. Enlargement of Time

- **(c) Enlargements Prohibited.** Neither the parties nor the court may, however, enlarge the time specified by R. 1:7-4 (motion for amendment of findings); R. 3:18-2 (motion for judgment of acquittal after discharge of jury); R. 3:20-2, R. 4:49-1(b) and (c) and R. 7:10-1 (motion for new trial); R. 3:21-9 (motion in arrest of judgment); R. 3:21-10(a); R. 3:22-12 (petitions for post-conviction relief); **R. 3:23-2 (appeals to the Law Division from judgments of conviction in courts of limited criminal jurisdiction); R. 3:24 (appeals to the Law Division from interlocutory orders and orders dismissing the complaint entered by courts of limited criminal jurisdiction);** R. 4:40-2(b) (renewal of motion for judgment); R. 4:49-2 (motion to alter or amend a judgment); and R. 4:50-2 (motion for relief from judgment or order).

Rule 7:14-1(c) **(c) Notification of Right to Appeal.** Regardless of whether the defendant pleads guilty or is found guilty after a trial, the court, as part of the opening statement, shall advise each defendant of the right to appeal and, if indigent, of the right to appeal as an indigent.

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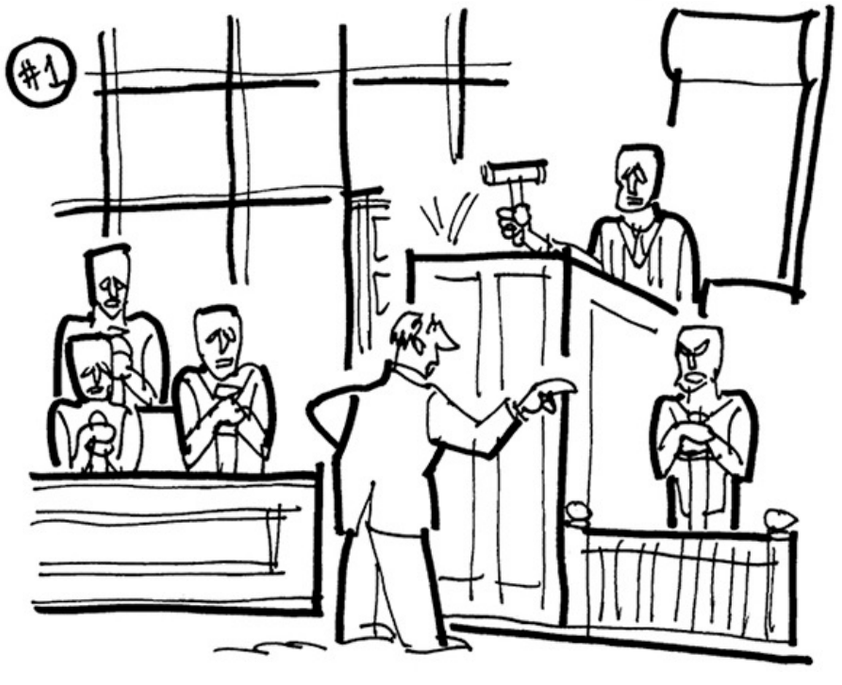
State v. Martin, 335 NJ Super. 447, 451-452 (App. Div. 2000)

With respect to the issue plaintiff subsumes in this appeal, the omission to advise defendant with regard to her right to appeal and the applicable time frame was another departure from fundamental requirements, the dictates of the Rules of Court, and common practice that should not have occurred. *See R.* 7:14-1(c); *cf. R.* 3:21-4(h).



The errors of the municipal court could not be addressed or ameliorated except by granting defendant's motion for leave to appeal out of time. Given the quality and scope of the errors committed by the municipal court and the fact that the motion before the Law Division was made only ten days after the time for appeal had expired, we regard the Law Division's declination to grant defendant the latitude she sought to have been a misapplication of discretion. The record contains no indication that the almost ten months that had passed since the plea proceeding was attributable to defendant. We note that the Law Division judge in denying defendant's motion for leave to appeal out of time stated no reason for that ruling, either on the record or in writing.

A Law Division decision also permitted the filing of a municipal appeal in a drunk driving case 8 months out of time and in disregard of Rule 1:3-4(c) where the defendant had not been provided a suitable interpreter in municipal court. See State v. Gonzalez, 186 N.J. Super. 609, 453 A.2d 297 (Law Div. 1982).

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However, the time limitations under Rule 3:24(b) governing the State's right to appeal a dismissal may be relaxed. State v. Burten, 207 N.J. Super. 53, 57-62, 503 A.2d 907, 909-12 (App. Div. 1986); State v. Sirvent, 296 N.J. Super. 279, 686 A. 2d 1202 (App. Div. 1997).

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3. You cannot file a PCR application beyond 5-years.

Rule 7:10-2(b) Limitations and Exclusiveness.

(1) A petition to correct an illegal sentence may be filed at any time.

(2) A petition based on any other grounds shall not be accepted for filing more than five **years after entry of the judgment of conviction or imposition of the sentence** sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect.

Laurick Applications:

Rule 7:10-2(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Conviction

(2) *Time Limitations*. The time limitations for filing petitions for post-conviction relief under this section shall be the same as those set forth in R. 7:10-2(b)(2).

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Relaxation under Rule 1:1-2 not prohibited under Rule 1:3-4.

For excusable neglect, see State v. Mitchell, 126 NJ 565 (1992).

For *Laurick* applications, see State v. Bringhurst, 401 NJ Super. 421, 437 (App. Div. 2008).

To summarize, a defendant's *Laurick* PCR petition brought more than five years after the predicate DWI conviction he challenges as uncounseled must comply with the requirements of *Rule* 7:10-2. A defendant must first establish that he is entitled to relaxation of *Rule* 3:22-12(a)'s time limit. In general, given the nature of a *Laurick* PCR petition, a defendant may routinely establish that any delay in filing his claim was not the result of neglect or some other disqualifying reason. However, a defendant must also allege facts in the petition sufficient to establish a prima facie case for relief under the standards enunciated in *Laurick* before relaxation is appropriate.

4. You cannot plea bargain DWI, Refusal & Drug Cases

See generally State v. Hessen, 145 NJ 441 (1996).
Guideline 4(A) and (B)

1.) Concurrent suspension time on 1st offense DWI & Refusal;
2.) Dismissal of refusal following a plea on a second or subsequent DWI arising from the same incident;
3.) Dismissal of School Zone offense following plea to companion DWI except in cases involving an accident **or** when school property being utilized;
4.) Dismissal of companion Chapter 35 or 36 charges following a plea or conditional discharge application;
5.) Any collateral charges associated with a DWI or Drug offense;
6.) The only prohibited drug offenses are NJSA 2C:35-10(a)(4), NJSA 2C:35-10(b) and NJSA 2C:36-2;
7.) Guideline 3 - Nothing in these Guidelines should be construed to affect in any way the Prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the Prosecutor determines and personally represents on the record the reasons in support of the motion. [See RPC 3.8 - Special duties of the prosecutor]

5. You cannot file written motions in municipal court.

7:7-2. Motions

- **(a) How Made.** Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, **shall be made orally**, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.

Rule 1:1-2(a) The rules in Part I through Part VIII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.

Good practice dictates that you include Rule 1:1-2 relaxation request in the form of order for every written motion.

Note: the following passage is the only time in the storied history of the English language that the word "**more**" has been used six times in two consecutive sentences.

Lastly, we are constrained to comment on the effect of *R.* 7:4–2(e), which permits motions in the municipal courts to be made "orally and informally." As our municipal courts mature and become responsible for the disposition of **more** complex, **more** serious in terms of penal consequence and **more** communally important cases, **more** formal practices become essential. We understand that much of the subject matter in controversy in the municipal courts is minor and, in such cases, informal practices should continue, but in the **more** significant cases, a **more** careful, thorough procedure is warranted. There is a recognizable difference in the analysis of the discovery in a drunk driving case as compared to one involving a stop light violation. The mere fact that the Court Rule allows informality does not give broad license to counsel. Motions and supporting documents assist the municipal court judge in making a fair and considered decision. State v. Holup, 253 NJ Super. 320, 326 (App. Div. 1992).

6. You cannot recuse a judge who has rendered an opinion on some aspect of the case pre-trial.

1:12-1. Cause for Disqualification; On the Court's Motion

The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge

- **(a)** is by blood or marriage the second cousin of or is more closely related to any party to the action;
- **(b)** is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;
- **(c)** has been attorney of record or counsel in the action;
- **(d)** has given an opinion upon a matter in question in the action;
- **(e)** is interested in the event of the action;
- **(f)** has discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in the matter; or
- **(g)** when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

Paragraphs (c), (d) and (e) shall not prevent a judge from sitting because of having given an opinion in another action in which the same matter in controversy came in question or given an opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or the municipality in which the judge resides or is liable to be taxed are or may be parties to the record or otherwise interested.

Apart from *R.* 1:12–1(d), a judge must recuse himself "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." *R.* 1:12–1(g). However, exposure to inadmissible evidence in the course of pretrial proceedings generally does not require disqualification of the judge even where the judge is to serve as the fact-finder. A judge sitting as the fact-finder is certainly capable of sorting through admissible and inadmissible evidence without resultant detriment to the decision-making process Trained judges have the ability to exclude from their consideration irrelevant or improper evidence and materials which have come to their attention. Having said this, a judge should be sensitive to the perception of the litigants, counsel, or the informed public that his exposure to inflammatory material might irredeemably preclude him from serving as a neutral and impartial arbiter of the facts. State v. Medina, 349 NJ Super. 108, 130 (App. Div. 2002).

7. You cannot enter your appearance for co-defendants in a case.

7:7-10. Joint Representation

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

State v. Land, 73 NJ 24 (1977).

8. You cannot require the State to produce *Crawford* witnesses in the absence of a written demand.

That being stated, we deem it appropriate prospectively to require, as a condition of our treatment of lab reports and blood sample certificates as "testimonial" documents, that defense counsel provide reasonable advance notice to prosecutors that they wish to cross-examine the authors of those documents at trial. In the absence of such reasonable notice, a defendant shall be deemed to have waived his or her right to confrontation. State v. Kent, 391 NJ Super. 352, 380-381 (App. Div. 2007).

See also NJSA 2C:35-19 which allows lab certificates attesting to the composition of a controlled dangerous substance to be presented in court in lieu of the laboratory technician's live testimony, unless the defendant provides the State with advance notice of objection to the admission of the certificate and demands the technician's appearance at trial.

9. You cannot cure an initial refusal to submit breath samples.

Left unanswered by our appellate courts thus far is whether a refusal may be "cured." We are persuaded that a bright line rule should be adopted, consistent with a growing majority of other jurisdictions with a similar implied consent law, which precludes a defendant from curing a refusal. Such a rule clearly effectuates the Legislature's regulatory aims embodied in the implied consent law. To hold otherwise, would unduly burden police officers by requiring them to wait for an indefinite period in an attempt to be able to refute a defendant's assertion that although he or she changed his or her mind and consented within a reasonable time, the police improperly disallowed a cure.

Further, permitting a cure hampers the State in the administration of its public policy of requiring the courts to work in tandem with the Legislature "to streamline the implementation" of laws designed to rid the highways of drunken drivers.. A bright line rule removes, rather than creates "obstacles impeding the efficient and successful prosecution of those who drink and drive."

Beyond that, permitting a cure flies in the face of good sense and established legal notions. Ordinarily, a violation is complete when the proscribed act or omission has come to pass. Once the violation has been committed, the accused cannot "undo" the violation except when permitted by the Legislature. A compelling parallel to this case, if a cure were permitted, can be found in a case where a defendant is found in an intoxicated state while sitting in the driver's seat of the car, holding the ignition key in his or her hand.. A rule that permits one accused of driving while under the influence of alcohol to cure a violation within a reasonable time, would mean that a suspected drunk driver caught behind the steering wheel of a car can "cure" if he or she gets out of the car within a few minutes and turns over the ignition key to the police officer, thereby indicating the suspect no longer has any intent to drive the vehicle. This illustration highlights the unsoundness of permitting a cure because it would impede as well as frustrate our strong public policy of removing drunken drivers from our highways. State v. Bernhardt, 245 NJ Super. 210, 217-219 (App. Div. 1991).

10. You cannot use a photo-radar to enforce speeding laws in municipal court.

39:4-103.1. Use of photo radar to enforce speeding laws prohibited

a. Notwithstanding any law, rule or regulation to the contrary, a law enforcement officer or agency shall not use photo radar to enforce the provisions of chapter 4 of Title 39 of the Revised Statutes.

b. As used in this act, "photo radar" means a device used primarily for highway speed limit enforcement substantially consisting of a radar unit linked to a camera, which automatically produces a photograph of a vehicle traveling at a speed in excess of the legal limit.

11. You cannot be prosecuted for riding a horse over a sidewalk at 4 mph.

39:4-100. Rate of speed across sidewalk

No vehicle or horse shall be driven or ridden across a sidewalk at a rate of speed greater than four miles per hour.

[Note -this is a non-point violation.]

12. You cannot defend a ticket based upon an unsigned summons.

In view of the important safeguards afforded by the officer's attestation of probable cause, we conclude that when a defendant challenges an unsigned traffic ticket on probable cause grounds the State must amend the defective instrument to reflect that the officer reasonably believed that the defendant had committed the violation alleged. The State may correct the error either by submitting an affidavit or testimony from the law enforcement officer demonstrating that there was probable cause for the ticket's issuance or by having the officer sign the ticket. In our view, the requirement that the State remedy an unsigned ticket, when challenged, fairly balances the defendant's interest in not being subject to unfounded prosecutions and our judicial interest in resolving traffic cases on the merits. State v. Fisher, 180 NJ 462, 475 (2004).

Having determined that the omission of an officer's signature is an amendable defect that does not void the traffic ticket, we conclude that *N.J.S.A.* 39:5–3(a) does not foreclose the State from supplementing the ticket with an attestation of probable cause more than thirty days after the commission of the offense. To the extent that the Appellate Division reached a contrary holding in *Brennan,* we overrule that decision. State v. Fisher, 180 NJ 462, 475 (2004).

13. You cannot order the sequestration of an expert witness.

Here, we are not confronted with a case in which each side has an expert witness, each holding opinions differing from the other. Rather, defendant seeks to present an expert who will offer an opinion on the sufficiency and reliability of the testing methods employed by the police. The most reliable way to secure that opinion would be to permit the proposed expert to hear the testimony by which the State seeks to secure the admission of those test results.

Further, we are of the view that to interpret *N.J.R.E.* 615 to authorize the routine sequestration of expert witnesses in a matter such as this is contrary to the terms of *N.J.R.E.* 703, which provides that an expert may base his opinion upon "facts or data ... perceived by or made known to the expert at or before the hearing." By its use of the preposition "at," the rule clearly envisions an expert observing trial proceedings and then commenting upon what he has heard.

State v. Popovich, 405 NJ Super. 324, 328 (App. Div. 2009).

14. You cannot get more than one diversion, even following an expungement.

Only painters and lawyers can change white to black." Rufus Choate.

Defendant has charted a most unusual and nimble course in his quest to expunge a municipal court conviction. The issue he raises by that singularly unique path, based on the submissions of counsel, further appears to be *res nova:* may an individual obtain the benefits of a conditional discharge at the municipal level, vacate it thirteen years later when it becomes an impediment to pretrial intervention (hereinafter referred to as "PTI") at the indictable level, and then expunge sequentially the indictable arrest and the municipal conviction? State v. Dylag, 267 NJ Super. 348 (Law Div. 1993).

State v. O'Brien, 418 NJ Super. 428 (App. Div. 2011).

Accordingly, we hold that where an individual is placed into supervisory treatment under the conditional discharge statute, *N.J.S.A.* 2C:36A–1, that person is prohibited from later entering into PTI, whether the conditional discharge is later vacated or not. Simply stated, it is the fact that the individual previously received supervisory treatment which prohibits him or her from re-enrollment into another diversionary program under PTI.

15. You cannot be convicted of the refusal offense for driving on purely private property.

NJSA 39:4-50.2(a) (a) Any person who operates a motor vehicle on **any public road, street or highway or quasi-public area** in this State shall be deemed to have given his 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;

NJSA 39:4-50.4a(a) - The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the **public highways or quasi-public areas of this State** while the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana.

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State v. Garbin, 325 NJ Super. 521 (App. Div. 1999).

State v. Bertrand, 408 NJ 584 (App. Div. 2009). [quasi-public area discussed].

16. You cannot get rid of the $250 surcharge under NJSA 39:4-97.2(f) except by paying it off.

See NJSA 2B:12-23.1 **Inability to pay fine in full on date of court hearing; community service; installment payments; alternatives upon default on payment for inability to pay**

a. Notwithstanding any other provision of law to the contrary, if a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing or has failed to pay a previously imposed penalty, the court may order the person to perform community service in lieu of the payment of a penalty; or, order the payment of the penalty in installments for a period of time determined by the court. If a person defaults on any payment and a municipal court finds that the defendant does not have the ability to pay, the court may:

(1) reduce the penalty, suspend the penalty, or modify the installment plan;

(2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;

(3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;

(4) order the person to perform community service in lieu of payment of the penalty; or

(5) impose any other alternative permitted by law in lieu of payment of the penalty.

b. For the purposes of this section, "penalty" means any fine, statutorily-mandated assessment, surcharge or other financial penalty imposed by a municipal court, except restitution or a surcharge assessed pursuant to subsection f. of section 1 of P.L.2000, c. 75 (C.39:4-97.2).

Same definition under NJSA 39:5-36

17. You cannot downgrade a criminal code offense to an ordinance violation.

From this:

To this:

NJSA 2C:1-5(d) Notwithstanding any other provision of law, the local governmental units of this State may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this code or with any policy of this State expressed by this code, whether that policy be expressed by inclusion of a provision in the code or by exclusion of that subject from the code.

State v. Crawley, 90 NJ 241 (1982)
State v. Meyer, 212 NJ Super. 1 (App. Div. 1986)
State v. Felder, 329 NJ Super. 471 (App. Div. 2000).
State v. Paserchia, 356 NJ Super. 461 (App. Div. 2003).
Atlantic County Prosecutor v. Atlantic City, 379 NJ Super. 515 (App. Div. 2005).

18. You cannot appeal a dismissal based upon a finding of no probable cause to issue process on a complaint.

In our State, there is simply no circumstance in which a private complainant can act as a prosecuting attorney without the special approval and process provided in *Rule* 3:23–9(d). In fact, [the complainant] lacks standing not only to have taken the initial appeal in the Law Division, but to further pursue the matter to this court.

The public policy behind the limitation on who may act as a "prosecuting attorney" is well-established: "[u]nlike private citizens, prosecutors are guided and governed by the Rules of Professional Conduct and our case law to ensure fairness in the process. Because they are mandated to ensure the fairness of the process, only prosecutors, as defined in the court rules, are authorized to act in cases that may result in incarceration or other penalties of magnitude. Such consequences require that prosecution be limited to those more interested in the "fairness [of] the process" than the vindication of individual interests. State v. Bradley, 420 NJ Super. 138, 142 (App. Div. 2011).

19. You cannot appeal a denial of a *de minimis* application..nor the grant of a *de minimis* application if you are a private citizen complainant.

Grape Thief

2C:2-11. De minimis infractions

The assignment judge may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The assignment judge shall not dismiss a prosecution under this section without giving the prosecutor notice and an opportunity to be heard. **The prosecutor shall have a right to appeal any such dismissal.**

However, we decline to adjudicate the contentions on their merits, as the complainant's appeal must be dismissed. The complainant has no right to appeal to us under our rules. *See R.* 2:3-1 and 2:3-2. The State, and only the State, can appeal a dismissal, particularly where the matter is being handled by a public prosecutor, and a citizen, including the complainant, who has not been designated "private prosecutor," does not have standing. Moreover, here the County Prosecutor decided not to object to the dismissal; in doing so he exercised his prosecutorial discretion, and has not appealed the dismissal.

State v. Vitiello, 377 N.J.Super. 452, 455-456 (App.Div.2005)

20. You cannot proceed to resolve a case on the merits following the grant of a motion to suppress.

Rule 7:5-2(c) **Order; Stay.**

(1) *Order Granting Suppression.* An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. **All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24.** The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

21. You cannot be denied bail following a conviction in municipal court.

7:4-8. Bail After Conviction

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the a appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.

3:23-5. Relief Pending Appeal

(a) Relief From Custodial Sentence. If a custodial sentence has been imposed, and an appeal from the judgment of conviction has been taken, the defendant shall be admitted to bail by a judge of the Superior Court in accordance with the standards set forth in R. 3:26-1a.

22. You cannot enter an initial plea on a traffic case involving death or serious bodily injury.

2B:12-17.2(a) Death or serious bodily injury; jurisdiction of superior and municipal courts; procedural guidelines for prosecution of certain offenses

In any matter concerning Title 39 of the Revised Statutes where death or serious bodily injury has occurred, regardless of whether the death or serious bodily injury is an element of the offense or violation, the Superior Court shall have exclusive jurisdiction over the offense or violation until such time that the Superior Court transfers the matter to the municipal court. For the purposes of this section, the term "serious bodily injury" shall have the meaning set forth in subsection b. of N.J.S.2C:11-1.

NJSA 2C:11-1(b) b. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

Statute enacted into law in response to In re Seelig, 180 NJ 234 (2004).

23. You cannot use criminal code defenses in a drunk driving case.

We hold that the provisions of the Code governing principles of liability are not applicable to the motor vehicle violation of driving while intoxicated under *N.J.S.A.* 39:4-50. State v. Hammond, 118 NJ 306 (1990).

However, common law defenses may be used. See State v. Romano, 355 NJ Super. 21 (App. Div. 2002) (Necessity)

24. You cannot utilize the physician and patient privilege in a motor vehicle case.

There is little doubt that this blamelessly-received information gave police a reasonable basis for believing Ms. Schreiber was drunk at the time of her accident. A statement by the attending physician regarding the patient's physical state or her test results provides more than adequate support for the reasonable police officer. That voluntary revelation, although delayed by twenty-nine days, was not stale. Although near the outer limit, it occurred within the one-month statute of limitations for motor-vehicle violations. We will not question here that legislative determination of when the reasonable time for investigating and identifying such violations ends. In conclusion, we find *N.J.S.A.* 2A:84A–22.2, which defines the patient-physician privilege, is to be strictly construed and by its language does not apply to a prosecution for violation of the motor vehicle laws.

2A:84A-22.2. Patient and physician privilege

[NJRE 506]

Except as otherwise provided in this act, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a crime or violation of the disorderly persons law or for an act of juvenile delinquency to refuse to disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that (a) the communication was a confidential communication between patient and physician, and (b) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (c) the witness (i) is the holder of the privilege or (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or his agent or servant and (d) the claimant is the holder of the privilege or a person authorized to claim the privilege for him.

25. You cannot maintain a civil lawsuit for damages or pain and suffering following a plea to DWI or Refusal.

39:6A-4.5. Failure to maintain required medical expense coverage; effect on recovery for non-economic loss

a. Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L.1972, c. 70 (C.39:6A-4) , section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or section 45 of P.L.2003, c.89 (C.39:6A-3.3) shall have no cause of action for recovery of economic or non-economic loss sustained as a result of an accident while operating an uninsured automobile.

b. Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of R.S.39:4-50, section 2 of P.L.1981, c. 512 (C.39:4-50.4a), or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or non-economic loss sustained as a result of the accident.

See generally Caviglia v. Royal Tours of America, 178 NJ 460 (2002).

26. You cannot attempt a disorderly persons' offense.

Criminal attempt

a. Definition of attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;

(2) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such result without further conduct on his part; or

(3) Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

State v. Clarke, 198 N.J.Super. 219 (App. Div. 1985).

But see NJSA 2C:29-1 and NJSA 2C:12-1(a)(1), both of which have attempt as an element of the d/p offense.

Garden State CLE presents:

"I told you before, NO! You can't do that and a half!"

TWENTY-SIX THINGS YOU CAN'T DO IN MUNICIPAL COURT...

(and how to do them anyway.)

Lesson Plan