

Garden State CLE presents

# Rules for Winning Your Municipal Court Appeal



Lesson Plan

# **Part I. Strategy and tactics of appeal**

**Successful advocacy in pursuing a municipal appeal is based upon two fundamental rules:**

## **Rule 1. Factual Determinations**

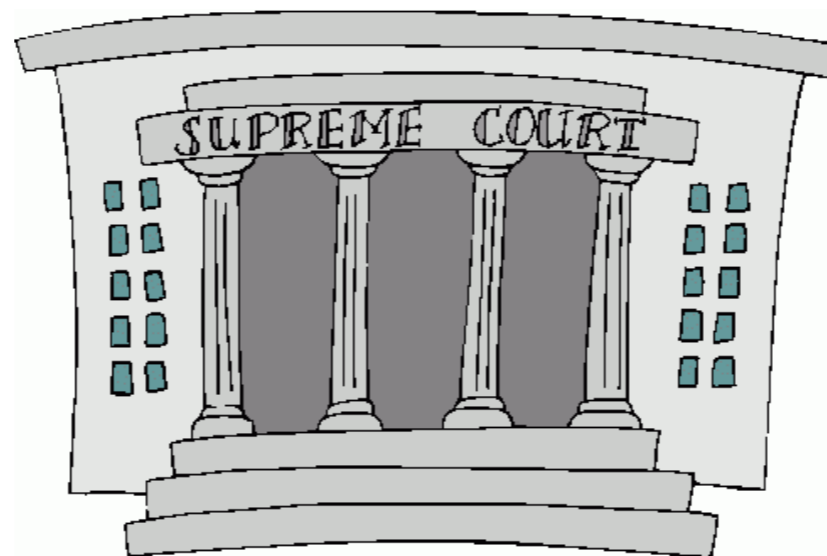
**Factual determinations by the trial court are entitled to a high degree of deference and will rarely, if ever, be disturbed. The legal foundations for this rule are best expressed in these famous words from the landmark decision in *State v. Johnson*, 42 NJ 146, 157 (1964):**

**When a judge of the Law Division considers a municipal appeal, his "function is to determine the case completely anew on the record made in the Municipal Court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses."**



## **The Supreme Court in Johnson went on to explain:**

**The Law Division judge, "must review the record in the light of the contention, but not initially from the point of view of how it would decide the matter if it were the court of first instance. It should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy. The aim of the review at the outset is rather to determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record. This involves consideration of the proofs as a whole; the appraisal is not to be confined simply to those offered by the plaintiff, for the question is not simply whether there was enough evidence to withstand a defense motion at the end of the plaintiff's case or of the entire case. When the reviewing court is satisfied that the findings and result meet this criterion, its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal. That the case may be a close one or that the trial court decided all evidence or inference conflicts in favor of one side has no special effect.**



**In order to reverse a decision based upon factual findings, the following must happen:**

**But if the appellate tribunal is thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and then, and only then, it should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions. While this feeling of 'wrongness' is difficult to define, because it involves the reaction of trained judges in the light of their judicial and human experience, it can well be said that that which must exist in the reviewing mind is a definite conviction that the judge went so wide of the mark, a mistake must have been made. This sense of 'wrongness' can arise in numerous ways—from manifest lack of inherently credible evidence to support the finding, obvious overlooking or under-evaluation of crucial evidence, a clearly unjust result, and many others.**



**In addition, municipal court judges need not articulate their credibility findings in the record. See *State v. Locurto*, 157 NJ 463, 475 (1999).**

**To require judges in our municipal courts with extremely voluminous case loads to articulate detailed, subjective analyses of factors such as demeanor and appearance to support credibility determinations on each and every witness presented before them would unnecessarily tax a system that is already overburdened. Furthermore, the benefit to be gained from the detailed, subjective credibility articulations advocated by the Appellate Division would do little to add to the completeness of the records already required to be developed by lower courts under current standards**

---

**Motions to dismiss, scheduling, evidentiary rulings, discovery disputes and expert testimony issues are all reviewed on appeal under an “abuse of discretion” standard (*State v. Burns*, 192 NJ 312 (2007)) and are poor candidates for reversal of a conviction on appeal.**



**Finally, there are practical and local political reasons why municipal court judges will make findings of fact that favor the State, especially in matters involving police testimony and testimony from uninvolved witnesses.**



## Rule 2. Legal Determinations

**Legal determination by the trial judge are not entitled to any level of deference and are to be decided *de novo*. (State v. Gamble, 218 NJ 412, 425 (2014)). This is the so-called *Manalapan* Rule:**

**“[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995).”**



# Commentary:

## Admit the Act: Win the Case

**As a result of the foregoing, in most instances, the strategy of a municipal court trial or dispositive motions should minimize or eliminate factual differences and concentrate on pure legal issues. This should be reflected in the appeal's letter brief as follows:**



# Sample Brief utilizing *Johnson & Manalapan* Rules

**Dear Judge Black:**

**Consistent with Rule 3:23-8(b) and Rule 2:6-2(b), please accept the following memorandum in lieu of a more formal brief in support of Defendant's municipal appeal.**

## Introduction

**The following municipal appeal involves the so-called "allowing" offense under NJSA 39:4-50(a)(1). The municipal court judge concluded that "allowing" the intoxicated operation of a motor vehicle is a strict-liability offense. In this appeal, Defendant will demonstrate that long-established New Jersey published case law requires proof by the State in an "allowing" case of objective knowledge of the driver's blood alcohol level by the defendant, an element that was lacking in this case.**



## PROCEDURAL HISTORY

**On November 22, 2013, Defendant was charged with a violation of N.J.S.A. 39:4-50(a) (allowing) by Patrolman Steven White of the East Windsor Township Police Department. The matter was tried before the Honorable Ronald Tiger, J.M.C. as a visiting judge in the East Windsor Township Municipal Court on June 15, 2014. Defendant was convicted and assessed a fine of \$400 together with required costs and assessments. Defendant was also sentenced to a seven-month loss of driving privileges and a requirement that he immediately install and ignition interlock device on his vehicle. Defendant's timely-filed municipal appeal is now before this Court.**



## Statement of Facts

**The facts in this matter were stipulated and can be gleaned from the annexed police report prepared by by Patrolman Steven White of the East Windsor Township Police Department.**

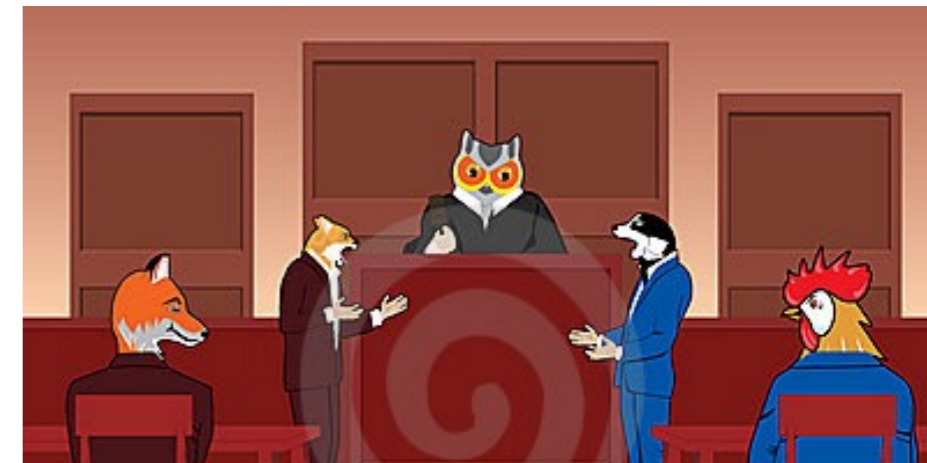
## Legal argument

# Part II. Limitations on Sentencing

**If the defendant is convicted following the municipal appeal, the Law Division judge must impose sentence.**

**Rule 3:23-8(e) provides:**

**(e) Disposition by Superior Court, Law Division. If the defendant is convicted, the court shall impose sentence as provided by law. If the defendant is acquitted, the court shall order the defendant discharged, the conviction in the court below set aside, and the return of all fines and costs paid by the defendant. An appropriate judgment shall be entered and a copy thereof transmitted to the court below.**



**Generally speaking, a defendant may not receive an enhanced sentence on appeal. See State v. De Bonis, 58 NJ 182, 188-189 (1971)**

**[We] are satisfied that as a matter of policy and apart from constitutional compulsion, a defendant who appeals from a municipal court should not risk a greater sentence. In reaching that conclusion, we are mindful of the reason for a trial De novo in these matters. The Legislature long ago provided for a retrial at the county level because of the weaknesses inherent in the system of local courts whose judges were locally appointed, served part-time, and frequently were not even members of the Bar. A structure of that kind could not command the complete confidence of the public. Although the municipal court of today is much improved over its ancestors, the structure remains unsound. There are 523 municipal courts. Their judges are still appointed locally, still serve part-time, and although membership at the Bar is now required (subject to a grandfather clause, [N.J.S.A. 2A:8-7](#)), this antiquated system of local courts cannot inspire the confidence with which the public approaches our county courts. We intend no reflection upon the many judges of the municipal courts who work hard and conscientiously notwithstanding the shortcomings of the system itself. Rather we recognize that, so long as this system endures, the need remains to afford the litigant, frequently a stranger to the locality, the opportunity to seek a re-determination by a court at a higher level without the risk of a larger penalty.**

**See also State v. Kashi, 180 NJ 45 (2004) (reaffirmed)**



# Commentary

**This rule of law does not apply where the initial sentence was illegal. An illegal sentence that has not been fully served can be corrected at any time. *State v. McCourt*, 131 NJ Super. 283 (App. Div. 1974). However, an illegal sentence that has been fully served is not subject to appeal. See *State v. Harris*, 439 NJ Super. 150, 161 (App. Div. 2015); *State v. Schubert*, 212 NJ 295, 309-10 (2012).**



# Part III. Timing Issues

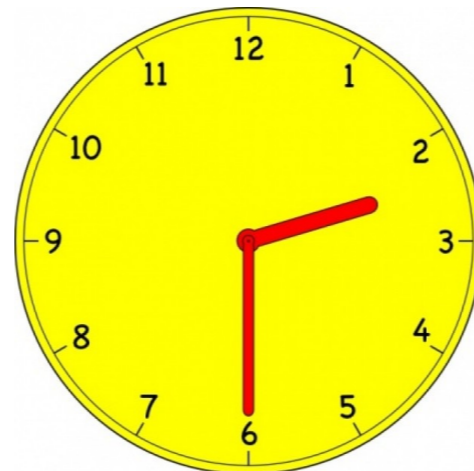
## Generally, Rule 1:3-4 does not allow for an increase in time to file an appeal.

### 7:14-1. Opening Statement

- **(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.
- 

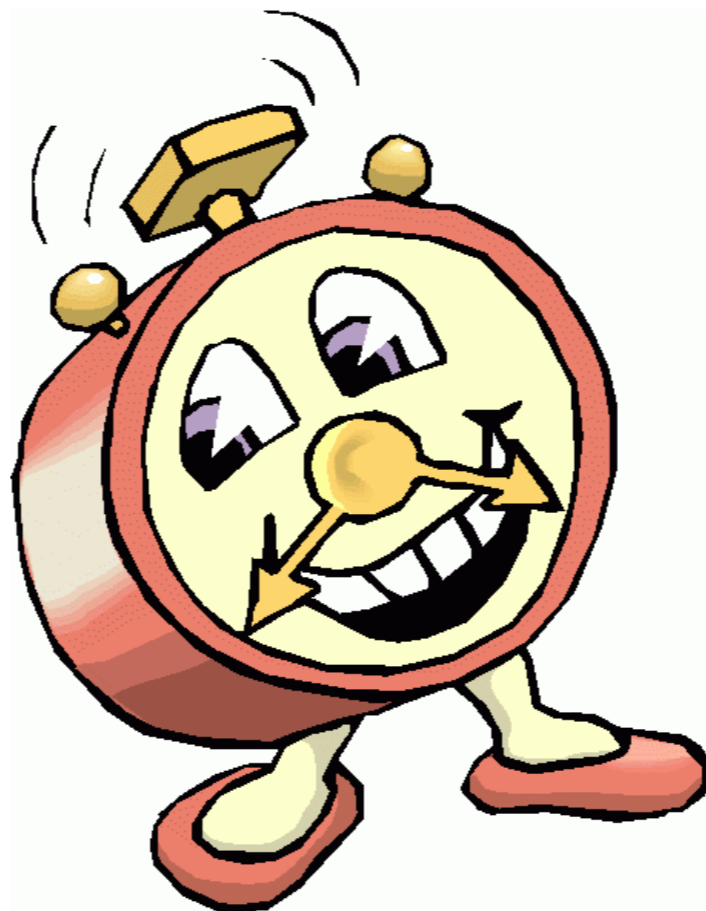
### 3:23-2. Appeal; How Taken; Time

**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).



## Extension of Time despite the Rule

**See State v. Martin, 335 NJ Super. 447 (App. Div. 2000) [No individual advisement on the right to appeal]**

**"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."**

**See also State v. Gonzalez, 186 NJ Super. 609 (Law Div. 1982) (Appeal filed 8-months out of time when defendant denied a suitable interpreter in municipal court.)**

**Note the time conflicts between Rule 3:23-2 and Rule 1:7-4, each of which has a strict 20-day time limit that will run simultaneously.**

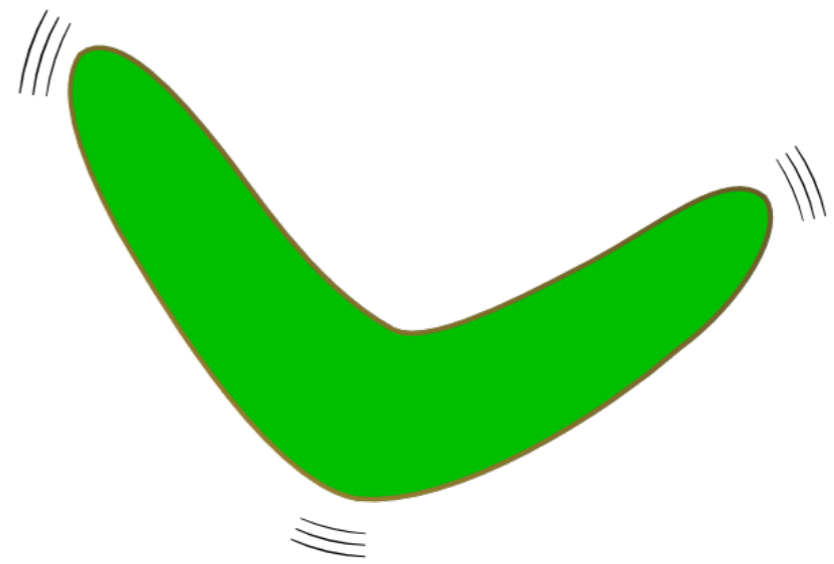


# Part IV. *Storm*: Automatic Reversals

Issues related to *State v. Storm*, 141 NJ 245 (1995)

*State v. Valentine*, 374 NJ Super. 292 (App. Div. 2005) (No *Storm* certification)

*State v. Myerowitz*, \_\_\_ NJ Super. \_\_\_ (App. Div. 2015) (Improper *Storm* certification)



# Part V. Stays pending appeal

## 7:13-2. Stay

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.

---

## 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.
- (b) **Relief From Fine.** A sentence to pay a fine, a fine and costs, or a forfeiture may be stayed by the court in which the conviction was had or to which the appeal is taken upon such terms as the court deems appropriate.
- (c) **Relief From Order for Probation.** An order for probation may be stayed if an appeal is taken.



# **See State v. Robertson, 438 NJ Super. 47, 74-76 (2014) for correct procedure:**

**[An] application for a stay pending appeal is governed by the three-part standard in [Crowe v. De Gioia, 90 N.J. 126, 447 A.2d 173 \(1982\)](#). [Garden State Equality v. Dow, 216 N.J. 314, 320, 79 A.3d 1036 \(2013\)](#).**

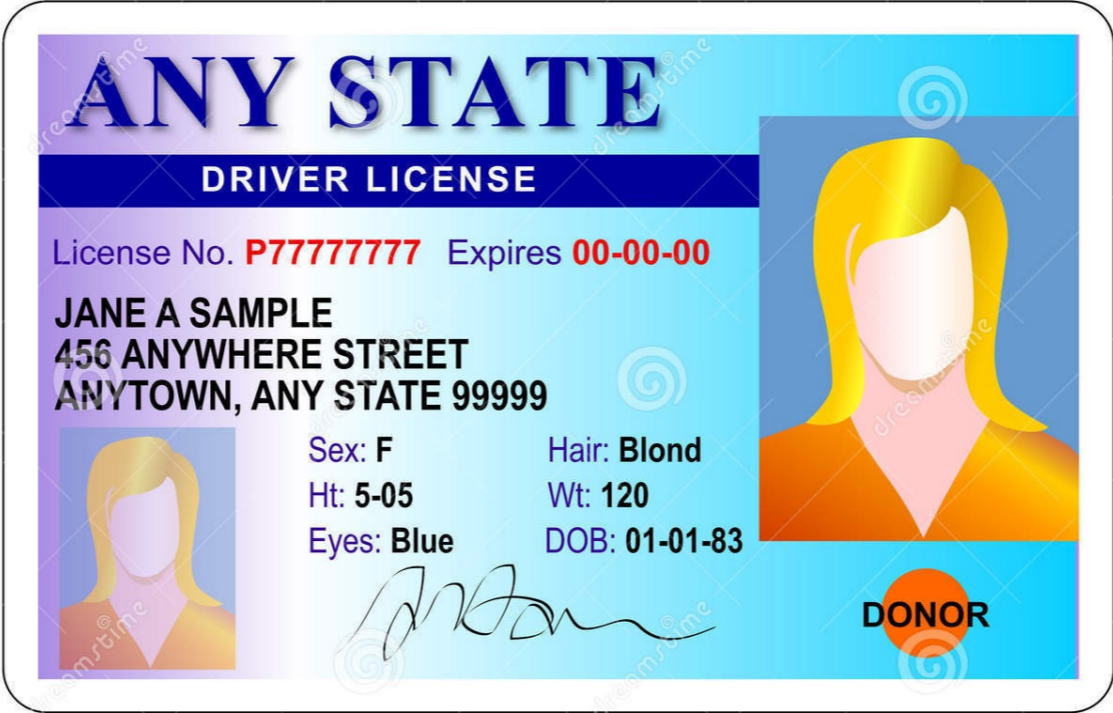
**A party seeking a stay must demonstrate that**

- (1) relief is needed to prevent irreparable harm;**
- (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and**
- (3) balancing the “relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.”**

**In cases of public importance, the public interest must also be weighed. A court should not stay the suspension of driving privileges of a person convicted of DWI or refusal without considering the factors governing the issuance of a stay. With respect to the second *Crowe* factor, the Court should consider whether the appeal involves a substantial question, and whether there is a reasonable prospect that defendant may prevail and avoid license suspension. In this case, for example, defendant sought a stay based on an argument that had been rejected multiple times by our court, albeit in unpublished decisions. Moreover, both the municipal court and Law Division judges were satisfied that defendant had violated [N.J.S.A. 39:4–50](#) based on the observational case.**

We appreciate that the loss of a driver's license is a substantial sanction. Although a DWI defendant sentenced to a term of incarceration by the Law Division is eligible for bail, [Rule 3:23-5](#), the stay of the license suspension should not be automatic. Moreover, as reflected in [Rule 7:13-2](#), a court that determines to impose a stay may do so upon appropriate conditions.

For example, if a convicted defendant demonstrates that the loss of driving privileges pending appeal would unavoidably and significantly interfere with his or her ability to maintain employment, and a stay is otherwise warranted under the *Crowe* factors, then the court may consider conditioning the stay by limiting the defendant's driving to that required by employment. The court may also condition a stay upon the verified installation of an ignition interlock device, which would provide some assurance that the defendant would not re-offend pending appeal. We leave it to the discretion of the trial courts imposing stays to develop other appropriate terms or conditions, reasonable under the circumstances, supported by competent evidence, and based on expressed findings of fact and conclusions of law.



# **Part V. Bail pending appeal**

## **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 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.**



# Commentary

**Setting of bail under Rule 3:23-5(a) by consent prior to the filing of an appeal. Useful in 3rd offense DWI cases with *Laurick* issues.**

## **Part VI. Conditional Pleas - 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).

---

**Motions to Suppress Evidence on 4th Amendment issues:**

**A conditional plea *is not necessary* following the denial of a motion to suppress evidence application. The 4th Amendment issues are automatically preserved for appeal. See Rule 7:5-2(c)(2):**

**(c)(2) Order Denying Suppression.** 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.

## Commentary

**A defendant has no right to take an interlocutory appeal of a denial of a motion to suppress evidence. The State may appeal as of right. Rule 7:5-2(c)**

**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.**

---

**A conditional plea is necessary for other dispositive motions brought under Rule 7:7-1 and Rule 7:7-2. (Examples: motion to suppress a confession under *Miranda*, motion to exclude an identification under *Wade*, motion to dismiss for discovery violations under *Holop*, any other motion to dismiss under Rule 7:8-5.**



## **7:7-1. Pleadings; Objections**

**Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.**

---



## **7:7-2. Motions**

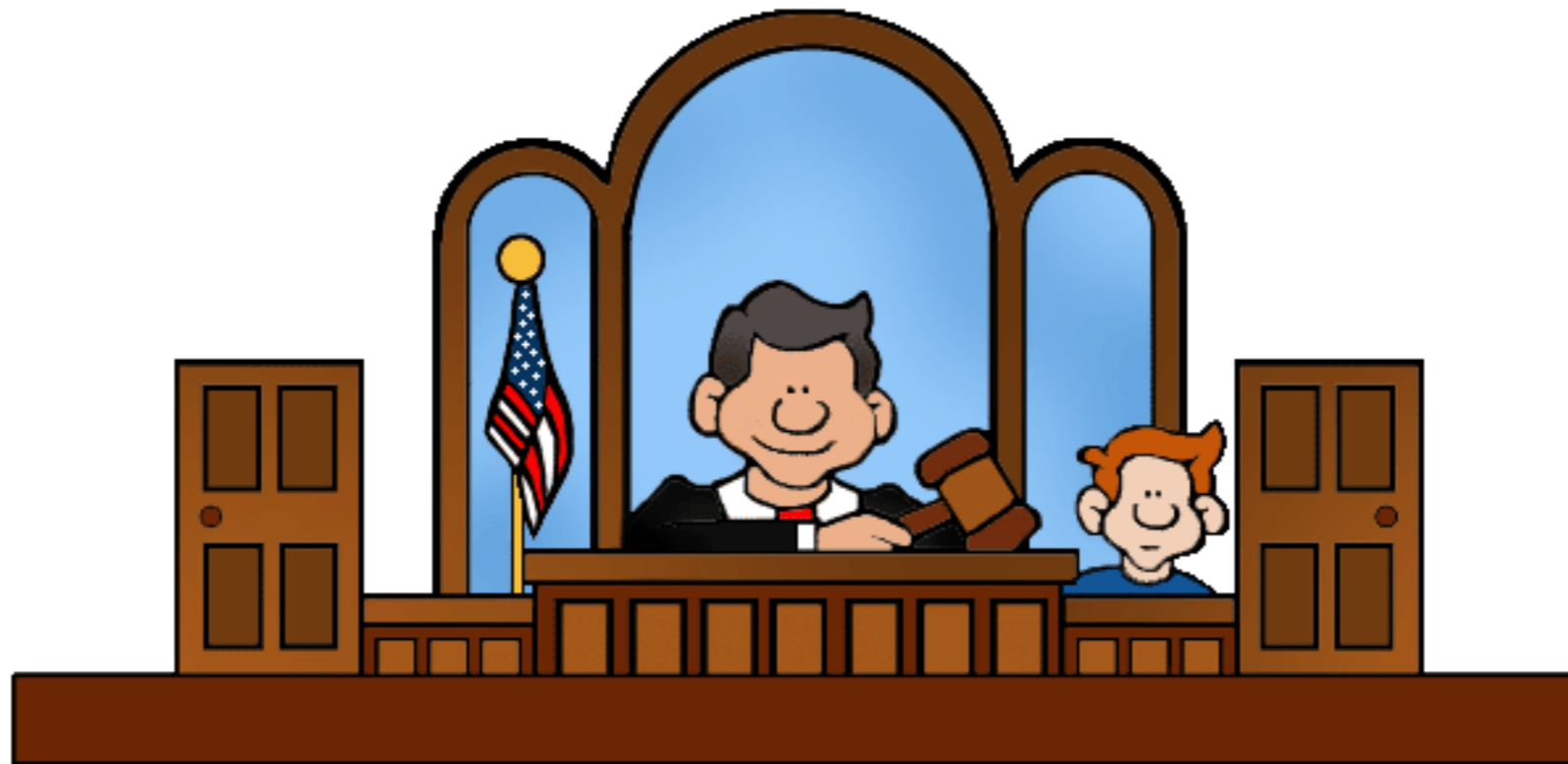
- **(a) How Made.** Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, shall be made orally, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.
- **(b) Hearings.** A motion made before trial shall be determined before trial unless the court, in the interest of justice, directs that it be heard during or after trial.
- **(c) Effect of Determination of Motion.** Except as otherwise provided by R. 7:6-2(c) (conditional pleas), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead, if a plea has not already been entered. If a plea has been entered, the defendant may be permitted to stand trial as soon as the adverse determination on the motion is made. If an objection or defense specified in R. 7:7-1 is sustained and is not otherwise remediable, the court shall order the complaint dismissed. If the court dismisses the complaint and the defendant is held in custody on that complaint, the court shall order the defendant released.

# Part VII. Interlocutory appeals

**Successful advocacy under Rule 3:24(a) involves the following:**

- 1. A signed order from the municipal court judge denying the relief sought. The 20-day time limit runs from the date the order is signed;**
- 2. A brief that will make a prima facie case that you will prevail on the merits on appeal and that the underlying decision will result in a substantial injustice.**

**Note: The State may take an interlocutory appeal as a matter of right following a dismissal (not acquittal) or the granting of a motion to suppress**



## ***RULE 3:24. Appeals From Orders In Courts Of Limited Criminal Jurisdiction***

- **(a) Either the prosecuting attorney or the defendant may seek leave to appeal to the Superior Court, Law Division from an interlocutory order entered before trial by a court of limited criminal jurisdiction.**
- **(b) The prosecuting attorney may appeal, as of right, a pre-trial or post-trial judgment dismissing a complaint and, notwithstanding the provisions of paragraph (a), an order suppressing evidence entered in a court of limited criminal jurisdiction.**



- **(c) Appeals pursuant to this rule shall be taken within 20 days after the entry of such order by filing with the Superior Court, Law Division in the county of venue a notice of motion for leave to appeal under paragraph (a) or the notice of appeal under paragraph (b), except that an appeal from the grant of a motion to suppress shall be taken within 30 days after the entry of the order. A copy of the notice shall be filed with the clerk of the court below, and a copy thereof shall be served on the prosecuting attorney as defined by R. 3:23-9 or on the defendant or defendant's attorney, as appropriate, at least 10 days prior to the return date fixed therein. The original filed with the court and the copy served shall have annexed thereto copies of all papers of record and any affidavits essential to the determination of the motion and shall be accompanied by a brief. The respondent shall file and serve any answering brief and other papers in opposition at least 3 days before the hearing. With respect to interlocutory applications, the court may grant or deny leave to appeal on terms and may elect simultaneously to grant the motion and decide the appeal on the merits on the papers before it, or it may direct the filing of additional briefs or make such other order as it deems appropriate for the expeditious disposition of the matter. A copy of any order or judgment entered by it shall be promptly transmitted to the clerk of the court below.**



- **(d) On appeal by the State from the grant of a motion to suppress the matter shall be tried de novo on the record. In cases in which the Attorney General or county prosecutor did not appear in the municipal court, the State shall be permitted to supplement the record and to present any evidence or testimony concerning the legality of the contested search and seizure. The defendant shall be permitted to offer related evidence in opposition to the supplementary evidence offered by the State.**



# Part VIII. Standing and post-judgment orders.

## 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.

---

Note that standing can include any person aggrieved by the conviction, including a victim or witness who might object to the grant of a civil reservation.

---

It does not include a private citizen complainant. See *State v. Carlson*, 344 NJ Super. (App. Div. 2001); *State v. Vitiello*, 377 NJ Super. 452 (App. Div. 2005)

---

Includes all post-conviction applications, including a motion to reconsider under rule 1:7-4, a motion for a new trial under Rule 7:10-1, a denial of PCR under Rule 7:10-2(a) and *Laurick* applications under rule 7:10-2(g). Note the venue for a *Laurick* appeal follows the drunk driving case, not the venue where the application was denied.



**LAW OFFICE OF ROBERT RAMSEY**

ATTORNEY-AT-LAW  
2000 HAMILTON AVENUE  
HAMILTON, NEW JERSEY 08619

\_\_\_\_\_  
P. (609) 396-7979  
F. (609) 584-1920

February 10, 2015

Diane Kent, Court Administrator  
East Windsor Township Municipal Court  
80 One Mile Road  
East Windsor, New Jersey 08520

**RE: State vs. Deborah A. Brown  
Complaint No. S1997-22222  
Municipal Appeal**

Dear Ms. Kent:

Enclosed please find a Notice of Appeal in connection with the above captioned matter. Ms. Brown was convicted and sentenced on June 15, 1998, in the East Windsor Township Municipal Court.

Our firm's check made payable to J&J Transcribers in the amount of \$300 is enclosed as a deposit for the transcript in this matter.

I am also filing a copy of this Notice of Appeal with Mercer County Clerk.

Thank you for your cooperation in this matter.

Very truly yours,

**RAMSEY LAW OFFICE**

**ROBERT RAMSEY**

RR:db

cc: Angelo Onofri, Acting Mercer County Prosecutor  
Mercer County Superior Court Clerk  
Deborah A. Brown

**LAW OFFICE OR ROBERT RAMSEY**

ATTORNEY-AT-LAW  
2000 HAMILTON AVENUE  
HAMILTON, NEW JERSEY 08619

\_\_\_\_\_  
P. (609) 396-7979  
F. (609) 584-1920

February 10, 2015

Donald F. Phelan, Clerk  
Mercer County Court House  
P.O. Box 8068  
Trenton, New Jersey 08650

**RE: State vs. Deborah A. Brown**  
**Complaint No. S1997-22222**  
**East Windsor Township Municipal Court Appeal**

Dear Mr. Phelan:

Enclosed please find our firm's check in the amount of \$75 along with a copy of our Notice of Appeal in connection with the above captioned matter. Ms. Brown was convicted and sentenced on June 15, 1998.

I have filed our Notice of Appeal with the East Windsor Township Municipal Court Clerk and have forwarded a deposit for the transcript in this matter.

By copy of this letter I am forwarding the Mercer County Prosecutor a copy of this appeal.

Thank you for your cooperation in this matter.

Very truly yours,

**RAMSEY LAW OFFICE**

**ROBERT RAMSEY**

RR:db

cc: Municipal Court Clerk  
Angelo Onofri, Acting Mercer County Prosecutor  
Deborah A. Brown

LAW OFFICE OF ROBERT RAMSEY  
2000 HAMILTON AVENUE  
HAMILTON, NEW JERSEY 08619  
(609) 396-7979  
ATTORNEY FOR DEFENDANT

---

STATE OF NEW JERSEY	:	EAST WINDSOR TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	
vs.	:	COMPLAINT NO. S1997-22222
	:	QUASI-CRIMINAL ACTION
DEBORAH A. BROWN	:	
Defendant	:	NOTICE OF MOTION TO APPEAL MUNICIPAL COURT SENTENCE

---

TO: Diane Kent, Court Administrator  
East Windsor Township Municipal Court  
80 One Mile Road  
East Windsor, New Jersey 08520

PLEASE TAKE NOTICE that Deborah A. Brown, residing at 2 Pebbles Court, Lawrenceville, New Jersey, hereby appeals to the Superior Court of New Jersey, Mercer County, for the conviction and sentence imposed on June 20, 2007 for a violation of N.J.S.A. 39:4-50.

A sound recording was made of the within matter in the East Windsor Township Municipal Court at time of sentencing pursuant to Rule 7:7-8(a).

I certify that I have requested a transcript in accordance with Rule 2:5-3(a).

**RAMSEY LAW OFFICE**

**ROBERT RAMSEY**

Dated: February 10, 2015

LAW OFFICE OF ROBERT RAMSEY  
2000 HAMILTON AVENUE  
HAMILTON, NEW JERSEY 08619  
(609) 396-7979  
ATTORNEY FOR DEFENDANT

---

STATE OF NEW JERSEY	:	EAST WINDSOR TWP. MUNICIPAL COURT MERCER COUNTY
Plaintiff	:	
vs.	:	COMPLAINT NO. S1997-22222
DEBORAH A. BROWN	:	QUASI-CRIMINAL ACTION
Defendant	:	PROOF OF SERVICE

---

The original of the within Notice of Motion to Appeal Municipal Court Sentence has been filed with Diane Kent, Court Administrator, East Windsor Township Municipal Court, 80 One Mile Road, East Windsor, New Jersey and with Katie Doe, Clerk at the Mercer County Court House located at 209 South Broad Street, Trenton, New Jersey.

On July 12, 2000, I, the undersigned, mailed a copy of the within to:

Jason Peters, Municipal Prosecutor East Windsor Township Municipal Court 80 One Mile Road East Windsor, New Jersey 08520	Angelo Onofri, Prosecutor Mercer County Pros. Office P.O. Box 8068 Trenton, New Jersey 08650
---	---

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

---

Deborah A. Brown

Dated: February 10, 2015

Dear Judge Black:

Please accept the following memorandum in lieu of a more formal brief in support of Defendant's municipal appeal.

### **PROCEDURAL HISTORY**

On November 22, 1997, Defendant was charged with a violation of N.J.S.A. 2C:29-1(a) by Patrolman Steven White of the East Windsor Township Police Department. Patrolman White alleged that the offense took place on November 22, 1997. The matter was tried before the Honorable Ronald Tiger, J.M.C. as a visiting judge in the East Windsor Township Municipal Court on June 15, 1998. Defendant was convicted and assessed a fine of \$150 together with \$30 costs of court. Defendant was also assessed \$50 for the Victims of Crime Compensation Board and \$75 for the Safe Neighborhoods Fund. Defendant appeals from the conviction in municipal court.

### **STATEMENT OF FACTS**

Testimony introduced at trial from Patrolman White indicates that on November 22, 1997 at approximately 5:36 p.m., he was dispatched to the Johns Restaurant on Route 130 in East Windsor Township. The purpose of the dispatch was to backup a fellow patrolman who was also responding to the Johns on a 911 call. Each of the two patrolman responded in different police cars. Apparently, Patrolman Green arrived at the scene first. Patrolman White, in a different patrol vehicle, was a few seconds behind pulling into the Johns parking lot. While entering into the rear of the plaza where Johns is located, the patrolman made a

left-hand turn into the Johns driveway. The patrolman attempted to make a turn into an area of the driveway, which was marked with a "Do Not Enter" sign. He could not proceed into the Johns parking lot because another vehicle coming the opposite direction was approaching his patrol car. He stopped his vehicle. The other vehicle pulled in front of the patrol vehicle and blocked the patrolman's access into the lane going toward Johns. The patrolman testified that he rolled down his windows and motioned for the driver to pass the patrol vehicle on the left. He did not see any response from the driver. He then motioned a second time at which point the driver exited his vehicle and walked over to the "Do Not Enter" sign. The driver of the other vehicle made several gestures toward the sign and stated that it said "Do Not Enter". Patrolman White further testified that he advised the driver to go around the patrol vehicle and that the driver replied "no". The patrolman testified that the drivers vehicle was positioned in such a way that the patrolman could not go around it and get to the area where he needed to go inside the Johns parking lot. Patrolman White advised the other driver that he was responding to an emergency call and that he had to let the patrol car go through. Patrolman White testified that the driver pointed to the sign and stated "no, you go around". After this transaction, Patrolman White documented the vehicle's registration in this notepad. He then backed up his patrol vehicle and went around the building through an alternate way.

The Court also heard testimony from Defendant. Defendant acknowledged being the driver of the other vehicle and being present at Johns on the date in

question. Defendant indicated that he encountered a vehicle coming in the wrong way through the Do Not Enter sign at Johns. He saw two headlights, which essentially prevented him from seeing anything else. Defendant testified that after thirty seconds of waiting, she got out of her car and walked over to the Do Not Enter sign, which was to the left of her vehicle. Defendant further testified that she pointed out the do not enter sign to the other vehicle. Defendant testified that when she got no reaction from the driver of the other vehicle, she walked up to the other driver's door and asked him what he was doing. Defendant reported that the patrolman responded "I am responding to a 911 emergency". Defendant then responded, "If you were, these lights would be on". Defendant then pointed to the emergency lights on top of the patrolman's vehicle. Defendant then testified that she instructed the patrolman as to where the entrance of the Johns was located.

Defendant testified that she was unable to move her vehicle because there was insufficient room to move forward with safety. Nor could Defendant move her vehicle backwards.

Judge Black resolved certain factual disputes in the testimony between the two parties in favor of the police officer and found that Defendant had purposely failed to follow the police officer's direction. The Court further found that because Defendant had the ability to move her vehicle, in the opinion of the Court, that her continuing obstruction when she had the ability to move,

constituted a purposeful obstruction. Based upon this analysis, Judge Black found Defendant guilty.

### **LEGAL ARGUMENT**

N.J.S.A. 2C:29-1(a) provides a variety of ways that the statute can be violated. In rendering his decision in the case, Judge Black did not indicate whether or not he believed beyond a reasonable doubt that Defendant purposely obstructed the administration of law or had merely attempted to prevent a public service from lawfully performing an official function by means of physical interference or obstacle. Each of these alternative means of violating of the statute requires purposeful conduct. The critical issue in this case is whether or not the State proved beyond a reasonable doubt the purposeful element required under the statute.

Judge Black found that Defendant's conduct was a violation of N.J.S.A. 39:4-57. This motor vehicle offense requires that drivers of motor vehicles at all times comply with the directions by voice or hand of a member of a police department when he/she is enforcing a provision of Title 39. This particular statute does not require any culpability state to be proved by the prosecution. Technically, this motor vehicle offense is not appropriate in this case as Patrolman White was not enforcing any provision of Title 39 when he made his voice or hand direction at Defendant. Rather, Defendant would concede that she violated the provisions of N.J.S.A. 39:4-215 by failing to obey the directions of a police officer. Once again,

this statute does not require any culpability state to be proved by the prosecution beyond a reasonable doubt.

Factually, Defendant would maintain that it was impossible for her to comply with the order of the officer because she could not move her vehicle safely, either forward or backward. Additionally, Defendant would maintain that her conduct did not evidence a purpose to pervert or interfere with the administration of law. N.J.S.A. 2C:2-2(b)(1) states that a person acts purposely with respect to the nature of his conduct or a result thereof, if it is his conscious object to engage in conduct of that nature or to cause such a result. Simply stated, there was no evidence proved in this case which could satisfy a reasonable fact finder that it was Defendant's conscious object to obstruct the administration of law or other governmental function.

Additionally, there was no proof that Defendant attempted to prevent a public servant from lawfully performing an official function by means of interference or obstacle. The concept of the lawful performance of an official function is critical here. The manner in which the officer attempted to enter the Johns violated the provisions of N.J.S.A. 39:4-81, in that signs placed there clearly indicated that people were not to enter through there. It was this unlawful attempt by the officer to perform an official function, which was really the central issue in this entire case. It was this fact that was pointed out to the officer by Defendant. A fair reading of the evidence would indicate that it was Defendant's

intention to point out that the officer had no right to enter that way as opposed to preventing him from performing an official function.

**CONCLUSION**

For the foregoing reasons, Defendant would maintain that the State has not proved the element of purposeful conduct as required under N.J.S.A. 2C:29-1(a)(1) beyond a reasonable doubt and accordingly, Defendant is entitled to a finding of not guilty in Superior Court.

Respectfully submitted,

**RAMSEY LAW OFFICE**

**ROBERT RAMSEY**

RR:db

cc: Angelo Onofri, Prosecutor  
Deborah A. Brown

Garden State CLE presents

**Rules for Winning**  
**Your Municipal Court Appeal**



**Lesson Plan**