

THE ADVOCATE

A Publication of Gambone Law – PA (215) 755-9000 - NJ (856) 793-7429

Newsletter



Give Thanks!



Thanksgiving is the biggest travel holiday of the year

What NOT to do if police stop your vehicle in New Jersey or Pennsylvania.

Thanksgiving is the biggest travel holiday and travel is often how many criminal cases come to our law firm in New Jersey and Pennsylvania. Remember that some of the most serious criminal charges involving drugs, illegal guns, and DUI, don't begin with a long police investigation but rather a simple vehicle stop on a road or street in Pennsylvania or New Jersey.

After more than a decade of defending accused person, our law firm has identified some common behaviors that people should avoid which can eliminate or minimize potential criminal charges. It's important to keep in mind that there is an increased police presence during the Holidays as local police and state troopers know that many individuals have the propensity to consume more alcohol than normal or engage in other activities which could present a threat to public safety.

If you are stopped by police this Thanksgiving or during the holiday season, I recommend NOT doing the following:

DO NOT refuse a breathalyzer or blood test.

While the United States Supreme Court case of *Birchfield v. North Dakota* has called into question the admissibility of blood evidence without a

subpoena, I do not recommend refusing a blood draw or breathalyzer. Remember the *Birchfield* decision does not affect the breathalyzer and if you refuse a blood test, Pennsylvania and New Jersey will suspend your driver's license as the result of a criminal prosecution is irrelevant.

Submitting to a chemical test after an arrest for DUI still allows your attorney to contest the admissibility of that evidence through a Motion to Suppress Evidence. This means that if the blood or breath test was taken against your Constitutional Right under the Fourth Amendment to the United States Constitution or the applicable Pennsylvania or New Jersey sections (Article 1, Section 8 and Article 1, Paragraph 7), a judge will not permit the prosecution (DA) to use the evidence against you at trial.

DO NOT argue with police

Arguing with police will never help your criminal case and if anything will make it worse! There are additional criminal charges which a prosecutor can bring for resisting arrest, disorderly conduct, and none of this will help your case. Not arguing with police does not mean consenting to a search or volunteering information to the officer.

It's important to remain silent, stay calm, and be polite to the police officer. Please don't make the mistake of believing any officer or member of law enforcement who claims to "go easy on you" if you simply cooperate. This is an inaccurate statement and a police officer simply has no control over how a criminal case proceeds or if certain charges are brought against an individual.

DO NOT consent to the search of your car or property

Every person has a right against illegal search and seizure pursuant to the Pennsylvania, New Jersey, and United States Constitutions. This is one of the strongest rights that anyone possesses and consenting to a search will never help your criminal case. When a person consents to a search they waive all constitutional rights and so your criminal defense lawyer cannot argue at a motion to suppress the contents of an illegal search and seizure.



What to do if police stop your car

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Holiday Drunk Driving Statistics – Don't be one of them!

The Holiday season begins with Thanksgiving! It is the most traveled holiday of the year. There will be more people on the road or in the air during Thanksgiving than practically any other day of the year! There will be an increased police presence in Pennsylvania and New Jersey where our law firm represents persons charged with crimes and offenses.

Our criminal defense law firm wishes you and your family happy holidays but please enjoy it responsibly! If you do plan on hitting the roads this year, here are some important statistics about drunk driving.

Drunk Driving Statistics

Drunk driving is one of the leading causes of traffic deaths in America, with drunk drivers causing 32 deaths a day according to the United States Department of Transportation. Last year, the death toll from drunk driving was a staggering 11,654, which was a 14 percent increase from the previous year. Driving under the influence (DUI) is a major problem in many states, including Pennsylvania and New Jersey. In addition to the senseless cost of life and serious injury, it accounts for over \$44 billion annually in property damage.

In 2022, alcohol-related crashes accounted for 7 percent of total crashes in Pennsylvania and New Jersey with 26 percent of people fatally injured in car accidents. Alcohol-related collisions were 4.3 times more likely to result in a fatal injury.

How Alcohol Affects Your Driving

Driving while impaired can be deadly. Alcohol is proven to reduce brain function and impair thinking, rational thought, and hand-eye coordination — all critical functions to operate a car.

The process of intoxication occurs when alcohol levels increase in a person's body. Alcohol gets absorbed by the stomach and small intestine, passes into the bloodstream, and raises a person's blood alcohol level (also known as blood alcohol concentration or BAC). The risk of a crash increases significantly once a person's

BAC is 0.08 grams of alcohol per deciliter or greater. It is illegal to drive with a BAC of 0.08 or higher.

**Please enjoy this Holiday Season responsibly!
Please don't drink and drive!**

What Every New Jersey Homeowners Need to Know About "Nightmare" Home Renovation Contractors

Douglas Maute, Esq.



While the right home improvement contractor can play a crucial role in transforming your house into your dream home, the wrong contractor can be your worst nightmare. Whether it's poor workmanship or pilfering deposit monies, there are plenty of horror stories to go around.

The old adage "buyer beware" causes victims of such scenarios to blame themselves after they learn all too late how little they know about the contractor or that contractor's business does not even exist. Too often, homeowners are reluctant to consult an attorney because they fear that the cost of a lawyer will exceed the value of the money lost to the contractor.

Here is what every New Jersey Homeowner should know:

In 2004, the New Jersey Legislature recognized

that home improvement contracting is particularly susceptible to consumer fraud violations by enacting the Contractor's Registration Act as a supplement to the Consumer Fraud Act. It contains expansive language and authorizes extensive remedies.

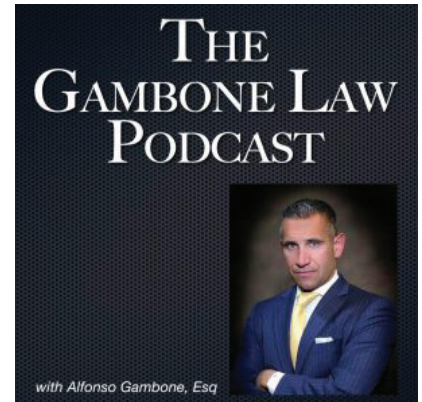
Any person or business engaged making or selling home improvements – "remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing, or otherwise improving" – must register with the New Jersey Division of Consumer Affairs, maintain insurance, and put all contracts for over \$500 in writing with certain disclosures.

New Jersey Courts have broadly interpreted "home improvements" to include work outside the residence, such as swimming pools, fences, patios, and decks.

Any violation of the Contractors Registration Act is deemed an "unlawful practice" under the Consumer Fraud Act. Perhaps most notable, a plaintiff with a successful Consumer Fraud Act claim "shall" be awarded three times his or her actual damages, plus attorney's fees and costs.

For example, by operation of these two Acts alone, a New Jersey homeowner who loses a \$3,000 deposit to an unregistered contractor for a fence for a verbal agreement, may be entitled to a judgment of \$9,000 plus their lawyers' fees and court costs.

A consultation with a lawyer worth your time and could make all the difference in your case!



Criminal Appeals David Simon, Esq.

Have you, or a loved one, been wrongfully convicted of a crime in Pennsylvania or New Jersey? Do you believe you have grounds to appeal a court's ruling or a conviction following a trial? If so, you have rights that need to be protected.

The Most Common Grounds for Criminal Appeals in Pennsylvania and New Jersey

The judge refused to exclude tainted or otherwise inadmissible evidence

Juror Misconduct

Prosecutor misconduct

The conviction is not supported by the evidence

A lower court made a serious error of law, such as:

Errors made by trial judge while instructing the jury

Mistakes or incorrect rulings by the trial judge

Sentencing errors

These rights can only be protected through a skilled and experienced criminal defense attorney handling appeals. Contact our law firm today to discuss your appeal today. You have a limited time to exercise your constitutional rights!

David focuses his practice on exclusively all aspects of legal research, and writing at the pre-trial, trial and appellate levels of criminal defense. He is originally from Seattle and earned his undergraduate degree from University of Wisconsin-Madison. David earned his Juris Doctor from Seton Hall Law School, where he was on the Legislative Journal staff, and, prior to private practice, served as a prosecutor.

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Biker charged with aggravated assault and possession of instrument of crime (PIC) in Center City Philadelphia.

What is a PIC and what is the difference between aggravated and simple assault?

Recently, a motorcycle biker, Cody Heron, was charged in Philadelphia with felony Aggravated Assault and Possession of an Instrument of Crime (PIC) (Misdemeanor). The felony and misdemeanor charge came after Heron allegedly got off his bike and allegedly jumped on top of back windshield of a motorist in Center City Philadelphia. In addition, Heron will also be charged with criminal mischief, terroristic threats, harassment, disorderly conduct, and disorderly conduct.

At the time of this incident Heron was allegedly riding his bike with a group riding similar vehicles and ATVs. These alleged gangs or groups have allegedly caused or been involved in similar incidents in Philadelphia. It is unknown if Heron is connected to these groups.

Heron allegedly not only stomped on the victim's car windshield, he allegedly head bunted her with his helmet. This allegation formed the basis for the aggravated assault and PIC charge. In this case the PIC was the helmet even though a helmet is something thought of as means of protection and not a weapon

This case presents an opportunity to explain the charge of Aggravated Assault versus Simple Assault along with Possession of an Instrument of Crime.

What is a PIC charge in Pennsylvania?

When it comes to "instruments of crime," most people immediately imagine a gun or some other firearm. In Pennsylvania, however, the crime of "possessing an instrument of crime" isn't exclusively reserved for guns and firearms.

In this case, the PIC is a motorcycle bike helmet!

Under Section 907(a) a person commits a misdemeanor of the first degree if he or she possesses any instrument of crime with the intent to employ it criminally. Under subsection (b) of this criminal statute, a person is also guilty of a misdemeanor of the first degree if he or she "possesses a firearm or other weapon concealed upon his person with the intent to employ it criminally".

To convict a person under subparagraphs a or b the District Attorney or Prosecutor must prove beyond a reasonable doubt the following elements against Cody Heron:

- Possession of an instrument (Biker Helmet);**
- An instrument that is commonly used for criminal purposes;**
- The instrument isn't being used for a lawful purpose (assault);**
- The intent to employ criminally.**

This criminal statute applies to more than just firearms and guns.

What else is considered a PIC in Pennsylvania?

While this criminal statute applies to more than just guns and firearms and could apply to a motorcycle helmet. Pennsylvania courts have held that the following items are not instruments of crime:

A pair of scissors	Flashlight
A table	Hammer
Broom handle	Baseball bat
Tire iron	Unsheathed hunting knife

Aggravated Assault (Felony) vs. Simple Assault (Misdemeanor)

In Pennsylvania, like many jurisdictions, there are different degrees of assault. Assault is either a misdemeanor or a felony offense in the Commonwealth. If assault is a misdemeanor it's defined as a simple assault in which the alleged perpetrator attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another person. Simple assault is also committed where the perpetrator acts negligently with a deadly weapon, causing bodily injury. A simple assault is a misdemeanor of the second degree. Heron will likely be charged with a Simple Assault in addition to the aggravated assault charge.

Aggravated assault occurs when the accused attempts to cause serious bodily injury to another or causes serious bodily injury intentionally, knowingly, or recklessly under circumstances "manifesting extreme indifference to the value of human life". An aggravated assault is also committed when a person causes or intentionally or knowingly causes bodily injury with a deadly weapon. Here, it is arguable that a motorcycle helmet is a deadly weapon but based on how it was used, the district attorney can make this argument.

If you are charged with aggravated assault in Pennsylvania or New Jersey contact our office to discuss your case! These are serious criminal charges!



RITA C. CARABELLO, D.O.

FAMILY MEDICINE UPDATE

Your Family Doctor – Create a Positive Eating Environment for Your Family

Rita Carabello, D.O.,

Parents and Grandparents play a critical role in shaping children's eating habits. Positive experiences about food early on will help your children develop healthy eating habits later in life which will reduce their risk for eating disorders, obesity, depression, diabetes, heart disease, and stroke.

Here are some tips to create a positive eating environment for your family:

Make healthy foods the usual choice.

What and how you eat sets an example for what your children will eat. Enjoy foods high in protein and fiber, such as vegetables, fruit in

moderation, whole grain, products, eggs, fish, lean meats, plain/low sugar Greek yogurt and milk; avoid or limit white flours, sugar and foods high in saturated fat. When your children see you eating these whole foods over highly processed, calorically dense, fast food, they are more likely to want to eat them too.

Meal Prep - Limit foods high in calories, fat, sugar and salt.

Focus your shopping on the perimeter supermarket aisles, compare labels and choose foods lower in saturated fat, sugar and salt. When you prepare your own food, you can reduce the overall calorie content including the amount of sugar, saturated fat and salt used in the meal. Prepare meals and freeze portions individually for school lunches, family dinner, or for an after school snack.

Stay Active

In addition to a proper diet focused on whole (single ingredient) foods over processed food, at least 60 minutes of daily physical activity is essential for kids. Limiting screen time, videos games, and choosing activities such as bike riding, other sports and simply walking or taking the stairs over their electronic alternatives are great ways to encourage activity and reduce the risk of obesity.

Dr. Rita Carabello is a Board Certified Family Physician with The Jefferson Health System. She is bilingual (Italian) and has over 20 years of experience providing health care to thousands of families throughout The Philadelphia Metropolitan Area and South Jersey.

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What NOT to do if police stop your vehicle in New Jersey or Pennsylvania. (continued)

DO NOT consume prescription drugs or any drug if you plan on driving in Pennsylvania or New Jersey

Most people believe that DUI/DWI is limited to driving under the influence of alcohol or illegal drugs. It's important to keep in mind that these criminal offenses focus on impairment and not the substance which caused that impairment. This means that if you ingest a drug which impairs your ability to operate a motor vehicle safely, you are guilty of DUI/DWI in both New Jersey and Pennsylvania

A conviction for driving under the influence of any combination of drugs in Pennsylvania subjects a person to a mandatory minimum of a 72 hour jail sentence and a 12 month license suspension. The prosecution doesn't need to establish a specific amount of a drug in your blood, only that there is evidence beyond a reasonable doubt that you consumed it. This means that the prosecution can meet its burden through an admission or some other proof that a person has consumed a drug which has impaired their ability to drive.

DO NOT carry your Pennsylvania gun into New Jersey

Pennsylvania and New Jersey have very different laws regarding the possession of gun and firearms. I can't stress enough the importance of obeying this rule, as New Jersey maintains mandatory minimum sentencing for the illegal possession of a firearm. While having a license in a separate jurisdiction like Pennsylvania may mitigate the sentence for an illegal possession, it is still a felony in New Jersey and will severely hinder a person's ability to obtain employment or certain government benefits.



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DISCOVER INFORMATION ABOUT CRIMINAL CHARGES, YOUR RIGHTS AND MORE WITH OUR FREE BOOKS



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The Cost of a Criminal Defense [QR code]

Question of the Month - What is the difference between Murder vs. Manslaughter? Answer: What separates murder from manslaughter in Pennsylvania and New Jersey is malice. Voluntary manslaughter is the intentional killing without lawful justification where the actor kills another due to a sudden and/or intense passion resulting from some serious provocation. Voluntary manslaughter is a felony of the 1st degree in Pennsylvania and a crime of the 2nd degree in New Jersey. In Pennsylvania, the maximum sentence for a felony of the 1st degree is 20 years of state incarceration while the maximum sentence for a 2nd degree crime in New Jersey is 10 years. (See 2C: 11-4 - New Jersey). Aggravated manslaughter is a crime of the 1st degree in New Jersey.



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