

When Police Stop Your Vehicle in Pennsylvania or New Jersey

DO NOT refuse a breathalyzer or blood test.

To put it very simply DO NOT refuse a blood draw or breathalyzer. It will never help your criminal case! PennDot & NJDOT can and 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

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 you consent to a search you waive all constitutional rights and so an attorney cannot argue at a motion to suppress these rights.

DO NOT make any statements.

- You are only obligated to provide your license, registration and proof of insurance
- You are not obligated to answer any of the following questions:
 - Where you are going
 - Where you came from
 - What you drank or used

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Question - What is the difference between a no contest plea and a guilty plea?

Answer: While a guilty plea requires a client to admit to certain facts during a plea colloquy, a plea of no contest or nolo contendere is much different. Procedurally, all pleas have the same effect on a case in that it resolves the matter prior to trial. In most situations, a client will receive a benefit toward a potential sentence given that he or she does not only spare the victim, and or a family further harm or suffering of often a long trial, but also saves the Commonwealth considerable time, resources and expenses which can be devoted to other matters.

While any plea option will result in a non-trial disposition, a no contest plea provides a client with additional protections which could dramatically affect a related civil matter. Unlike a guilty plea, a no contest plea does not involve any acknowledgment as to having committed an illegal act but rather admits that the allegations, if proven beyond a reasonable doubt, meet the elements of the offense or offenses charged.

THE ADVOCATE

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Newsletter



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Domestic Violence & Restraining Orders in New Jersey

New Jersey, like Pennsylvania, provides protection for victims of Domestic Violence. In New Jersey a victim may seek a Restraining Order against his/her abuser through an Order granted by the Superior Court, Family Part, pursuant to the **Prevention of Domestic Violence Act (PDVA)**.

What is a Temporary Restraining Order (TRO)

Where a claim of violence is alleged, the victim may seek a Temporary Order at any time. The victim may seek this Order during normal Court hours or at a police station when Courts are closed. To retain a Temporary Order (TRO) the victim must allege predicate under the PDVA and further state that he or she believes that the abuser presents a threat to their safety. The Court will grant the Temporary Order and schedule a Final Restraining Order Hearing (FRO).

While the TRO is in place, however, the abuser cannot contact, directly or indirectly, the victim. If the abuser contacts the victim, he or she can be held in contempt of this TRO.

What happens at a Final Restraining Order Hearing (FRO)

At an FRO Hearing the victim, through counsel, must satisfy a two (2) part test:

1. The Court must determine whether the Plaintiff (victim), has proven by a preponderant amount of evidence that one (1) or more predicate acts under the Domestic Violence Act was committed; and
2. Whether a Final Restraining Order should be granted to protect the victim from further violence.

What is considered domestic violence in New Jersey (predicate act?)

In New Jersey domestic violence means one or more of the following acts (predicate act)

1. Assault
2. Terroristic threats
3. Kidnapping
4. Criminal restraint
5. False imprisonment
6. Sexual assault
7. Criminal sexual assault
8. Criminal mischief
9. Burglary
10. Trespassing
11. Harassment
12. Stalking
13. Criminal coercion
14. Robbery

Violation of a FRO or TRO is a crime in the fourth degree in New Jersey.

It is important to understand that the Commission of one or more predicate acts in and of itself does not automatically require a Restraining Order. The Plaintiff must prove that it is necessary to protect the victim from immediate danger or to prevent further abuse.

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What to do if police stop your car

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Alec Baldwin Indicted on Involuntary Manslaughter– What it means and what is the difference between Voluntary and Involuntary Manslaughter

Recently, a New Mexico grand jury indicted Alec Baldwin on Involuntary Manslaughter charges in a 2021 fatal shooting during a rehearsal on a movie set. The case will now go to trial unless Baldwin enters into a plea agreement with the prosecution. At this point, according to Baldwin’s criminal defense lawyer, Baldwin will fight these charges.

You may recall that Baldwin was the lead actor and a co-producer on the movie “Rust.” During the movie production, Baldwin pointed a gun at cinematographer Halyna Hutchins. The gun went off and killed her and wounded director Joel Souza.

Murder vs. Manslaughter

Similar to New Mexico law, what separates murder from manslaughter in Pennsylvania and New Jersey is malice. 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.

Involuntary manslaughter occurs when a person dies as the result of an unlawful act of another who commits it in a reckless or grossly negligent manner or does a lawful act in a reckless or grossly negligent manner. It is often not graded as a felony crime (Pennsylvania-Misdemeanor) but in New Mexico, it is a fourth-degree felony punishable by up to 18 months in prison and up to \$5,000 in fines.

The Burden of Proof to Indict at a Grand Jury

An indictment isn’t a finding of guilt, but rather that enough evidence exists for a person to stand trial on a charge, otherwise known as an “indictable crime.”

There is a Prima Facie burden of proof at a grand jury which is the same evidentiary standard judges use to issue search warrants.

If the grand jury does not find that there is sufficient evidence (aka “No Bill”), it may find that enough evidence exists to charge a person with a less serious offense (disorderly or petty disorderly) and remand the case to municipal court which is a court of limited jurisdiction.

What are the obligations of a Prosecutor before a Grand Jury?

The State, through the prosecutor, isn’t required to even inform the grand jury that the accused didn’t have a motive for committing the crime for which the state seeks the indictment. There is also no obligation for the prosecution to present evidence which could impeach the credibility of the witness testifying before the grand jury (i.e., the witness’s prior criminal history).

The prosecution is only required to present “clearly exculpatory evidence” such as physical evidence of unquestioning reliability which demonstrates that the accused didn’t commit the alleged crime. The standard for “clearly exculpatory” evidence is high, and the New Jersey Constitution allows trial courts to act with substantial caution before concluding that the prosecution’s decision to not present this evidence amounted to an error which will allow them to dismiss the indictment entirely.

Motion to Dismiss the Indictment for Lack of Prima Evidence

Once a grand jury indicts, the only recourse for an accused individual such as Alec Baldwin is for his attorney to consider a motion to dismiss the indictment based on insufficient evidence to establish a Prima Facia case against the accused. Keep in mind however that a criminal trial court will only dismiss an indictment only where the grand jury’s decision was based on “manifestly deficient or defective” grounds. This is a very high evidentiary standard to overcome for the defense and, in most situations, a trial court won’t overturn the decision of a grand jury.

While an accused can appeal a trial court’s decision denying a motion to dismiss to an appellate court,

an appeals court will find in most cases that it is within the discretion of the trial court to make this determination. Remember that a grand jury doesn’t determine guilt, but only that a clearly innocent person does not face prosecution because of some over-zealous prosecutor, partisanship, or some personal vendetta.

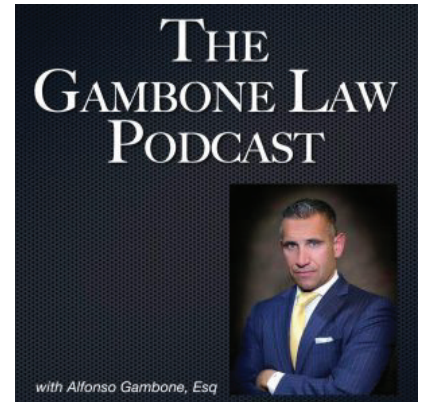
Pre-Indictment Plea Agreements

Prior to an indictment the prosecutor and defense attorney will enter into plea negotiations where the prosecutor typically offers the defendant a plea agreement which usually features a reduced term of incarceration or perhaps probation in exchange for a plea. In addition, some agreements downgrade or dismiss charges.

Prior to entering into an agreement, the defense attorney will review the document with the accused. He or she must sign a statement certifying that he or she understands the plea and is entering into the agreement voluntarily without pressure from the prosecutor or his own defense attorney. Keep in mind, the judge isn’t obligated to accept the plea agreement and can order the defense and prosecution to re-negotiate the matter or schedule a trial.



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When Can Police Legally Search Your Vehicle in New York?

There are several circumstances under which a police officer can legally search your vehicle without your consent or a warrant.

Let’s explore these scenarios:

- **Consent:** If you give the police officer permission to search your vehicle, they have the legal right to do so. However, you also have the right to refuse their request.
- **Plain view doctrine:** If an officer sees illegal items such as drugs or weapons in your car, they can conduct a search based on the Plain View Doctrine.
- **Search following an arrest:** If you’re arrested after a traffic stop, the police officer has the right to search your vehicle to ensure their safety or to preserve evidence related to your arrest.

• **Probable cause:** If the officer has a reasonable belief that your vehicle contains evidence of a criminal activity, they can conduct a search. This could be based on sight, smell, or other sensory perception.

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What footprints in the snow can teach about circumstantial evidence in criminal cases and why everyone should understand it

Winter is here and so is the snow with more on the way! Unlike previous years, the white powder has arrived and this presents a great opportunity to talk about evidence! While most wouldn't associate snow with evidentiary principles, snow is often used to explain circumstantial evidence to juries and even law students.

Why circumstantial evidence is important.

Circumstantial evidence is a critical concept in criminal defense and often one that clients fail to understand. Some clients actually get furious when attorneys try to explain it! One of the most common complaints that we receive from clients is that their criminal case should be thrown out or dismissed because of insufficient evidence. Many people assume that the prosecution needs to produce an eyewitness to prove charges beyond a reasonable doubt—WRONG!

The footprints in the snow example is good way to explain how the lack of an eyewitness, doesn't necessarily mean that an event didn't occur or a crime wasn't committed. The example that is often used is that on a particular evening you go to bed while it was snowing. When you awoke, there was snow on the ground and footprints across your lawn. You didn't see a person walk across your lawn and you didn't even hear the person, but the footprints provide circumstantial evidence that this event occurred.

Examples of Circumstantial Evidence in Criminal Cases.

In most criminal cases, especially those involving illegal drugs, guns and even DUI, police make an arrest based on circumstantial evidence. With a drug case involving the possession of drugs or narcotics with the intent to distribute or deliver, circumstantial evidence such as a large quantity of drugs, money, and drug paraphernalia (bags, twist ties, scales) is often what the prosecution (assistant district attorney –ADA) uses to prove their case along with expert testimony regarding those items.

A case involving an illegal gun or firearm, circumstantial evidence such a DNA (not necessarily fingerprints) found on the weapon or gunshot residue on clothing or hands are all forms of circumstantial evidence. A case involving drunk driving (DUI), circumstantial evidence are keys in the ignition while the defendant is sitting next to vehicle or the person's wallet on the seat of the car following an accident. Obviously, all of these examples are open to attack from your criminal defense lawyer but my point is, however, that circumstantial evidence is sometimes enough to prove a person guilty beyond a reasonable doubt.

Please don't assume that because police or some other eyewitness didn't actually observe the commission of a crime that the prosecution has a weak case. A large number of criminal cases don't have eyewitnesses and many of these cases end with convictions. If your criminal case involves a prosecutorial circumstantial evidence theory, your lawyer must be ready for it.

One strategy that I recommend is arguing what the prosecution failed to argue rather than simply arguing that the defense witnesses are more credible. Frequently prosecutors and assistant district attorneys will ignore alternative theories that can explain away circumstantial evidence and establish reasonable doubt. While something like footprints in the snow may be difficult to explain, the types of footprints and the pattern of the

prints, for example, may all good areas for your attorney to explore during cross examination.

If you would like to learn more about criminal defense strategies and tactics, I encourage you to visit my free download section and subscribe to my free monthly newsletter. If you have a particular question, email me at Alfonso@gambonelaw.com and I'll try to provide you with the best explanation based on my over a decade of experience representing people in your situation.



Start Your 2024 Strong!
Schedule Your 2024
Appointment with
Dr. Carabello Today



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Are you at risk for type 2 diabetes?

What you consume throughout your day and how active you are affects your risk of developing type 2 diabetes. Being overweight (BMI of 25-29.9), or affected by obesity (BMI of 30-39.9) or morbid obesity (BMI of 40 or greater), greatly increases your risk of developing type 2 diabetes. More than 90 percent of people with type 2 diabetes are overweight or affected by a degree of obesity.

In addition to excess weight, there are many other factors that increase your risk of developing type 2 diabetes, such as:

- Sedentary lifestyle
- Unhealthy eating habits
- High blood pressure and high cholesterol

How do you test for type 2 diabetes?

There are a variety of blood tests that may indicate whether you have type 2 diabetes. Talk to your doctor!

FAMILY MEDICINE UPDATE

Family Medicine Update - Type 2 diabetes

Type 2 diabetes is a chronic, potentially debilitating and often fatal medical condition requiring regular monitoring of an individual's blood sugar level and treatment. In type 2 diabetes, the body either does not properly produce or use insulin, a hormone produced by the pancreas that helps move sugar into cells. The body becomes resistant to insulin and this resistance causes high blood sugar levels.

Excess sugar in the blood causes many health-related problems. The cells cannot get enough of the sugar they need, and when sugar levels in the blood become too high, it causes damage to nerves and blood vessels, usually in the heart, feet, hands, kidneys and eyes. Other complications of high sugar and insulin resistance include:

- Increased risk of heart disease and stroke
- Neuropathy (nerve damage, especially in extremities)
- Nephropathy (renal impairment, kidney failure)
- Retinopathy (vision problems, blindness)
- Cardiovascular disease (heart disease and increased risk of stroke)

- Erectile dysfunction in men and decreased sexual desire in both men and women
- Depression

How does excess weight impact type 2 diabetes?

Excess weight can greatly affect your health in many ways, with type 2 diabetes being one of the most serious. There are many forms of measurement used to evaluate someone's excess weight; however, the most commonly-used method is your calculating body mass index (BMI).

BMI is a number calculated by dividing a person's weight in kilograms by his or her height in meters squared. BMI is a useful tool used in determining the degree of an individual's excess weight.

Individuals affected by excess weight, particularly obesity and morbid obesity, are more likely to develop type 2 diabetes as a related condition of their excess weight. Obesity and morbid obesity greatly increase your risk of having heart disease, type 2 diabetes, certain types of cancer, sleep apnea, osteoarthritis and much more.

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