

THE ADVOCATE

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

Newsletter



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NBA Payer Arrested For Assault of Another Player – What is the difference between Simple and Aggravated Assault?

Recently Phoenix, Arizona police arrested Detroit Piston player Isiah Stewart after he allegedly struck Phoenix Suns' player, Drew Eubanks, before a game between the Detroit Pistons and Phoenix Suns. Eubanks allegedly sustained minor injuries which likely formed the basis for the probable cause for the criminal charge against Stewart. It appears, at this point, Stewart is only charged with simple assault.

Simple Assault

In Arizona, like Pennsylvania and New Jersey, assault charges can derive from different scenarios. Pushing, hitting, pinching, biting, and slapping are all examples of simple assault. It is a misdemeanor crime and not a felony. While it is not a felony, a person convicted of this crime will have a criminal record. In addition to a record, assault can also carry jail time and probation. Jail, however, is unlikely here.

A person also commits simple assault if he puts another person in fear of imminent serious bodily injury. It is important to understand that a threat itself doesn't constitute a simple assault. A threat is only simple assault if the actor is in a position to carry out the threat immediately and takes affirmative steps to do so.

It's also important to consider that the prosecution doesn't need to establish the victim of an assault sustained an actual injury. The prosecution, however, must establish beyond a reasonable doubt that the accused intended and attempted to put the victim in fear. The victim's state of mind,

therefore, is irrelevant. There are other crimes in Pennsylvania where the victim's state of mind is relevant.

Aggravated Assault

This NBA player is not charged with aggravated assault which is a much more serious. It is a felony crime. Aggravated assault is committed when one attempts to cause serious bodily injury or causes such injury purposely or, under circumstances manifesting extreme indifference to the value of human life, recklessly causes such injuries.

Law Enforcement & Assault Charges (Protected Classes)

The person who is allegedly assault also matters when it comes to assault. In Arizona, like New Jersey and Pennsylvania, a person who commits a simple assault against a member of law enforcement, commits an aggravated assault.

What about criminal diversion programs?

Despite these allegations, there is a very strong possibility that Isiah Stewart will not end up with a criminal record. The case may eventually be dismissed or it is likely that Stewart will receive some type of criminal diversion program like Accelerated Rehabilitative Disposition (ARD) in Pennsylvania or Pre Trial Intervention (PTI), or a conditional discharge in New Jersey.

We frequently encounter clients who, prior to retaining our firm, have had no previous contact with the criminal justice system. These individuals are often charged with misdemeanor offenses which derive from an incident involving alcohol, a small amount of drugs, a physical altercation, or some other incident which required a response from law enforcement.

Clients who find themselves charged with one of these offenses are normally more concerned with a

stain on their otherwise clean record and potential negative consequences in the future which could limit their professional opportunities. A criminal conviction, even for what most would

consider a minor offense, could substantially affect one's ability to obtain employment.

Our firm maintains a very good track record of negotiating an alternate disposition with the prosecutor assigned to these matters.

Most states maintain diversion programs for minor criminal offenses but it is the responsibility of the individual and the defense counsel to investigate

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NHL Players Charged with Sexual Assault—How is sexual assault defined in Canada and what is the burden of proof?

Recently four professional hockey players were charged with sexual assault in London, Ontario, Canada. This criminal prosecution will not occur in the United States, but the case has made headlines here in the United States. One of the players is Philadelphia Flyer's Goalie, Carter Hart. Hart along with three other professional hockey players were charged with an alleged sexual assault which occurred in 2018, when they were a part of Team Canada in the World Junior Championship. The team went on to win the championship that year.

Civil vs. Criminal Liability

The alleged victim in the case did pursue the action civilly and Hockey Canada, the organization, responsible for the team settled a lawsuit with the alleged victim who claimed that she was sexually assaulted by eight (8) members of the team after a party celebrating their Gold Medal win at the 2018 World Championship.

Despite the civil settlement, authorities within Canada continued to look into the allegations and launched an investigation in 2022, which led to the current charges against these professional hockey players.

How is Sexual Assault Defined in Canada?

These players are charged with what is known as indictable offenses under Canadian Law. Indictable offenses or crimes are similar to felony crimes in the United States. Under Canadian law sexual assault occurs if a person is touched in any way that interferes with their sexual integrity. This includes kissing, touching, intercourse, and any other sexual activity without his or her consent.

How Serious is Sexual Assault in Canada?

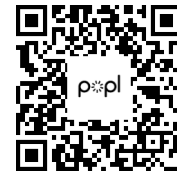
Under Canadian law sexual assault is what is known as a hybrid offense which allows the Court to proceed with the charge as an indictable offense or by summary conviction. A conviction for an indictable offense or crime is much more serious than a summary conviction.

In Canada if a person is guilty of sexual assault and the prosecution (the Crown) proceeds with the prosecution the person faces a maximum of ten (10) years of

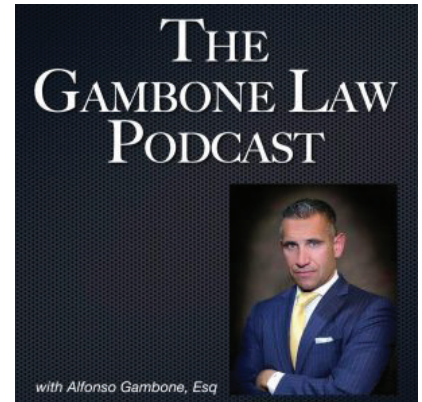
prison. Under a summary conviction, the accused faces up to eighteen (18) months in jail. If the victim is under the age of sixteen (16).

What is the burden of proof in this case?

In Canada, the Crown Prosecutor is the equivalent of an Assistant District Attorney or Prosecutor in the United States. The burden of proof in a Canadian Court is similar to the United States. In the Canadian system less than absolute certainty is required but more than the probability of guilt is necessary.



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Alfonso Gambone, White's lawyer, argued for a 15-year sentence, citing eight other New Jersey vehicular homicide DUI cases in which each defendant was sentenced to 12 years or fewer. (Photo Credit: Shay Roddy)

Sentencing – Why the Right Defense Lawyer is Critical Even if Your Case isn't Going to Trial

Recently our law firm represented a man in Cape May County, New Jersey in a vehicular homicide that sadly took the lives of 2 people. This case didn't go to trial due to the overwhelming amount of evidence against our client. Based on our detailed evaluation of the case, the State (prosecutor) would have met its burden of proof of guilt beyond a reasonable doubt. Despite a case not going to trial and resulting in a plea, there is so much your criminal defense lawyer

can do for you!

This was one of our law firm's most difficult sentencing proceedings. Our client faced over 85 years of incarceration for 2 aggravated vehicular manslaughter charges in addition to related crimes. The facts in this case were overwhelming and the possibility of an acquittal was nonexistent. In addition, the very aggravating nature of the case would have almost ensured the Judge would have imposed well beyond the sentence we negotiated in this case.

Sentencing in New Jersey and Pennsylvania is entirely in the discretion of the sentencing

Judge, but the Prosecutor (District Attorney) and the Defense are permitted to negotiate as to a recommendation which is often approved and imposed.

Effective representation at sentencing requires that your criminal defense lawyer has a strong command of mitigating and aggravating circumstances, sentencing guidelines, offense gravity scores, prior criminal history, the sentencing judge's tendencies, victim impact statements and testimony. Even if your case isn't going to trial do not under value the importance of the right lawyer! Call us today!

Criminal Defense

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Former NFL Player Richard Sherman Charged with Drunk Driving – What could he have done different following his police car stop?

Richard Sherman, the former all pro NFL defensive back was recently arrested in King County, Washington, on suspicion of drunk driving (DUI.) State Police stopped Sherman who was allegedly traveling 79 MPH in a 60-MPH zone at about 2 a.m. This speeding would have at least formed probable cause for the vehicle stop. Following the stop, police allegedly detected the odor of alcohol but it is unclear if police gave Sherman field sobriety test prior to arresting him. Sherman, however, did admit to consuming alcohol despite having no obligation to make a statement to police.

What pre-trial legal arguments are available to Richard Sherman?

Sherman’s criminal defense lawyer should evaluate possible pre-trial motions which should focus on suppressing the evidence against him. Remember that a motion to suppress will focus on the reasonable suspicion and or probable cause to stop a driver and or the reasonable suspicion and or probable cause to arrest the driver for drunk driving. This is often the best way to fight a drunk driving charge before trial.

Sherman was arrested after police stopped his vehicle for speeding. This set of circumstances probably means that his attorney won’t be able to successfully argue a motion to suppress for lack of probable cause to stop his vehicle. The speeding itself provides police with sufficient probable cause to stop a driver for suspicion of drunk driving (DUI).

What did Richard Sherman do wrong after police stopped his car and how did he make his defense weaker?

Sherman allegedly refused the chemical test (breathalyzer) which was the wrong thing to do here. Regardless of what happens, this chemical test refusal will result in an automatic license suspension. Further, he should not have made any statements about where he was going, where he had been or what he consumed that evening. Statements will never help your criminal case and they will not help Sherman with this drunk driving charge.

How could have Richard Sherman made his case better from a defense standpoint?

Sherman has a prior conviction for drunk driving and so he has at least some experience with the process. Following the police stop, he should have not made any statements to police. He should have simply been cooperative and provided the troopers with his driver’s license, registration, and proof of insurance. This is all that is required following a drunk driving stop!

How serious is this drunk driving charge? Can he receive a criminal diversion program?

At the minimum, Sherman faces a license suspension, fines and possibly jail if he is convicted of this drunk driving charge. He will not qualify for any drunk driving diversion programs if they are available due to his prior conviction. Sherman is also apparently on probation after he pled guilty in 2022 to two misdemeanor charges stemming from a drunk driving and domestic disturbance. This new arrest alone could lead to a probation violation. The probation violation could lead to more probation or even jail!



Schedule Your Appointment with Dr. Carabello Today



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You can support weight loss by substituting these high calorie, high sugar, ultra processed foods for those higher in protein and fiber option, such as grilled, baked, or air fried lean meats, fish, eggs, egg whites, high fiber non starchy vegetables (leafy dark greens), low glycemic fruits (dark berries, grapefruit), Plain / Low Sugar Greek Yogurt, and Cottage Cheese.

In addition to these food choices, regular cardiovascular exercise and strength training will not only support weight loss but improve your body composition. Even if you are limited on time, setting a goal of at least 5,000 to 10,000 steps a day combined with some simple body weight exercises is an easy way to reach your goals.

YOUR HEALTH

What You Need to Know About Eating to Lose Fat and Improve Body Composition

Most people believe that weight loss is simply a matter of eating less during their day. While calories do matter, your food choices, and movement are critical to your ultimate long-term success with your health and fitness goals.

Foods that are high in sugar, refined carbohydrates, and fat are often low in protein and fiber. This combination will make weight loss harder and also have an adverse effect on your health. Foods that are high in protein and fiber will not only support your weight loss goal by making you feel fuller, they will also help improve your body composition when combined with regular exercise.

Here are some examples of foods that you should substantially restrict or avoid if you’re trying to lose weight, improve your health markers and your body composition.

Alcohol	Jams & Jellies	Ice Cream
French fries	Donuts	Pizza
Chips and Crackers	Candy	High Sugar and High Calorie Coffee Drinks
Sugary Soft Drinks	Fruit Juice	Sugary Cereals
Sliced Bread & Rolls	Pastries	Granola Bars
Bagels	Cookies	Flavored (High Sugar) Yogurt

NBA Payer Arrested For Assault of Another Player – What is the difference between Simple and Aggravated Assault? (Cont.)

possible entry into these programs. Entry into these programs is not automatic and usually requires direct negotiation with the prosecutor, their supervising attorney, and in some cases, the judge who will hear the case.

The primary benefit of an alternative disposition is a guaranteed result. I often explain to our clients that no attorney, ethically, can guarantee a certain result in a case that goes to trial. While an attorney may provide a very confident opinion of a potential outcome, he must nevertheless explain the possibility of a conviction.

Diversion programs offer the benefit of a guaranteed positive result and normally provide the client with the ability to have their record expunged following completion of the program.

What is the benefit of a criminal diversion program?

While these diversion programs offer clients the ability to avoid trial, it is important to understand that each program maintains certain requirements which the individual must complete. Failure to complete the requirements of the diversion program will result in a person's release from the program. Once a person is removed from a diversion program, his case is scheduled for trial and the only way to avoid a possible conviction is

a successful defense.

Requirements of these diversion programs are based on the nature of the offense and usually consist of drug treatment, alcohol counseling, anger management, restitution, or a certain number of hours of community service. In some cases the programs even require a written apology to the alleged victim. While most clients gladly accept entry into a diversion program some often find it difficult in cases where they firmly believe that they have committed no misconduct.

If you're charged with a crime and have no previous criminal history it is important to discuss non-trial alternatives with your criminal defense attorney. These programs may be an option but they will require you to complete specific tasks. If your principles will not allow you to make these concessions, your only alternative is more than likely trial.



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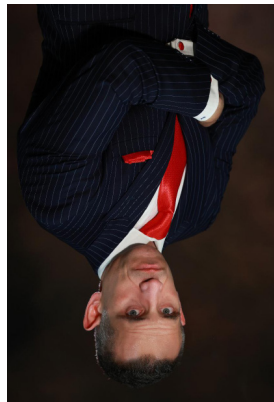
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Question of the Month
New Jersey?
Question - What is the difference between careless and reckless driving in New Jersey?
Answer: Careless driving (2 Points) is a much less serious offense (C39:4-97) than reckless driving. Careless driving is committed when a person operates a vehicle without (due caution) in a manner that is likely to endanger another person or property. The difference between reckless and careless driving is intent. Careless driving is committed when a driver unintentionally exhibits unsafe behavior while reckless driving is committed with a willful action.
Reckless driving (4 Traffic Points) in New Jersey is very serious as it carries with it a possible driver's license suspension (C39:4-96). A person is guilty of reckless driving if he or she operates their vehicle in a willful or wanton disregard for the safety of others in such a manner that it endangers the safety of another person or property. The maximum punishment for reckless driving is up to sixty (60) days in County jail as well as a \$200.00 fine for a first offense. A second offense carries with it County jail up to three (3) months and a maximum fine of \$500.00.



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