

In this Issue:

1. Investigator violated rules by destroying notes.
2. Cellphone can't be tracked without warrant.
3. Landlord could call police to advise saw drugs.
4. Next Events, Reminder: Holiday Happy Hour & Networking Social, Friday, December 6, 2013; 5:00PM - 7:00PM Bar A, Belmar

1. Investigator violated rules by destroying notes. State v. Dabas \_\_\_ NJ \_\_\_ (2013)(A-109-11)

The prosecutor's office violated its post-indictment discovery obligations under

Rule 3:13-3, when its investigator destroyed his notes of a two-hour pre-interview of defendant. The trial court abused its discretion in denying defendant's request for a charge that would have allowed the jury to draw an adverse inference from the destruction of the interview notes more than a year after the return of the indictment.

2. Cellphone can't be tracked without warrant State v. Earls \_\_\_ NJ \_\_\_ (2013)( A-53-11)

Article I, Paragraph 7 of the New Jersey Constitution protects an individual's privacy interest in the location of his or her cell phone. Police must obtain a warrant based on a showing of probable cause, or qualify for an exception to the warrant requirement, to obtain tracking information through the use of a cell phone.

3. Landlord could call police to advise saw drugs State v Wright \_\_\_ NJ Super. \_\_\_ (App. Div. 2013) A-4813-10T1

This appeal concerns the "third-party intervention" (or "private search") doctrine, which courts have applied in authorizing the police to inspect or search a defendant's property in certain instances without a warrant, so long as the police do not exceed the scope of the private actor's intrusion that led to the police's involvement.

The trial court relied upon this doctrine in denying defendant's motion to suppress drugs and other incriminating evidence seized by the police from his girlfriend's apartment. The landlord had entered the apartment at the girlfriend's request to repair a leak. While he was there, the landlord observed drugs on a nightstand and, in fear, he called the police. The police responded to the scene, were let into the apartment by the landlord, and confirmed his observation of the drugs and other contraband in open view. The girlfriend then arrived and the police secured her consent to a search of the apartment, through which they found a gun and other evidence of criminal conduct.

Given the heightened constitutional protection that the Fourth Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution accord to the privacy of residential premises, the court joins with several other courts in limiting the extent to which the third-party intervention doctrine may authorize warrantless police searches of private residences. In particular, the court holds that, at the very least, the doctrine does not apply in situations where the third party who provides the police with access to a dwelling has entered it unlawfully or otherwise in violation of the resident's property rights or her reasonable privacy expectations. Apart from that limitation, the doctrine also should not apply if the totality of the intrusion by the private party and law enforcement officials is objectively unreasonable.

Because these residency-related limitations were not violated here, the court affirmed the denial of the suppression motion and defendant's ensuing conviction.

#### 4. Next Events

Tue, Dec 10 @ 6:00p

Annual Young Lawyers Holiday Brew Ho-Ho  
[<http://r20.rs6.net/tn.jsp?t=ze9oujpab.0.0.ijlzbhpab.0&id=preview&r=3&p=http%3A%2F%2Fwww.mcbalaw.com%2Fcde.cfm%3Fevent%3D391362>]

Mike's Courtside Tavern

1 Elm Row

New Brunswick

Heavy Hors D'oeuvres, Open Bar, Games, Co-Sponsored by the NJSBA  
Young Lawyers Lawyers  
Division

Cost: \$20 Law Clerks; \$30 Young Lawyers; \$40 MCBA Members; and \$60  
All Others

---

#### REMINDER:

Clients,  
Friends, Attorneys Professionals, Business owners and their staff  
invited to Holiday  
Happy Hour & Networking Social  
Friday, December 6, 2013  
5:00PM - 7:00PM  
at Bar Anticipation  
703 16th Avenue  
Lake Como/ Belmar, NJ 07719  
Free !  
5-7PM Hot & Cold Buffet with carving station

The reduced price Happy Hour is 6-7PM with \$1 House Drink,  
Bud/BudLt draft & House  
Wine Special

Sorry if this is a Duplicate but we did not want to miss anyone

Please bring a canned food donation for the St. James Food Bank

Hands of Hope, continuing  
providing food and help to individuals in need.

Email Ken Vercammen's Law Office so we can put your name on the VIP  
list for wristbands  
@ VercammenLaw@Njlaws.com  
<https://www.facebook.com/events/595540683835671/>

Co-Sponsored by this year the NJSBA Municipal Court Section, Solo &  
Small Firm Division,  
Criminal Law Section, Young Lawyers Division, Family Law Section,  
Entertainment  
Arts & Sports Law Section, Banking Law Section, Women in the  
Profession Section,  
Minorities in the Profession Section, LGBT Rights Section,  
Government & Public  
Sector Lawyers Special Committee.

~~~~~  
~~~~~