

# **GARDEN STATE CLE LESSON PLAN**

**A 1.0 credit course**

**FREE DOWNLOAD  
LESSON PLAN AND EVALUATION**

---

## **CONTEMPT OF COP**

---

**With**

**Robert Ramsey**

***Author, NJ Arrest, Search & Seizure Review***

**(Thomson-West)**

***And***

**William E. Sitzler**

***Attorney at Law***

### **Program description**

The police might think your client was disrespectful or insufficiently deferential to their authority. But that doesn't necessarily mean your client should have been charged with anything. This CLE program examines "contempt of cop" in New Jersey and how to help your clients that may have clashed with their arresting officer.

## **I. Introduction**

- **Practicing law for 37 years**
- **Interest in defending DWI offenders**
- **Currently representing towns, insurance defense, special counsel contracts with the City of Trenton, ABC Special Counsel for the City of Trenton**
- **Primary experience in DWI defense and prosecution – career public defender; municipal prosecutor in Mt. Holly**
- **Mt. Holly Gardens Citizens in Action Inc. v. Township of Mt Holly, 658 F.3d 375 (CA3, NJ 2011)**
- **30 years public defender in Mt. Laurel**
- **Likes defending better because “too easy to be a prosecutor”**
- **Hon. John Call, J.S.C., Burlington County – sometimes prosecuting is like shooting fish in a barrel**
- **Defending people is a challenge**

## **II. Contempt of cop**

- **Defined as disrespect for the police – can take on all types of legalities, i.e. disregarding directions, being obnoxious, cursing, criticizing police – can be a bystander who walks by**
- **Need a thick skin to deal with the things day in and day out – when dealing with drunk people police know what is going on**
- **Sometimes police have to take action when the person is sober and has his wits about him and is heckling the police**
- **Oakland CA Police Department study – many arrests for “contempt of cop” – by Christy Lopez; [www.Acslaw.org/sites/default/files/Lopez\\_Contempt\\_of\\_Cop.pdf](http://www.Acslaw.org/sites/default/files/Lopez_Contempt_of_Cop.pdf) – “Disorderly misconduct, the problem with contempt of cop arrests”**

## **III. Types of Charges Police File and Related Issues**

- **NJSA 2C:29-1 Obstructing the Administration of Law**
- **NJSA 2C:29-3b(4) Hindering apprehension or prosecution – giving false information to a law enforcement officer**
  - **State v. Valentin, 105 NJ 14 (1987) – changed hindering statute; statute used to require volunteering false information such that without being asked anything would volunteer false information**
- **NJSA 2C33-2a(1) Disorderly conduct**

- **Ordinance violations as well – usually not charged but maybe plead down to an ordinance**
- **1<sup>st</sup> amendment issues – NJ courts do not go through analytical process instead referring to US cases as basis for the defense of these types of cases**
- **2C:33-2a – “tumultuous” – State v. Stampone, 341 NJS 247 (App. Div. 2001) – if you have a case with this statute, focus on “tumultuous” – not clearly defined**
- **State v. Davis, 2011 WL 2350039 (App Div) – questioning what is meant by tumultuous**
- **2C:29-1 – State v. Perstein, 206 NJS 246 (App. Div. 1985) – woman stopped by police and giving them a hard time**
  - **Statutory language: “A person commits an offense if he purposely obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.”**
  - **Woman would not show her registration and since have obligation under 39:3-29 thus she was liable under 2C:29-1**
  - **Problem with statute is “purpose”**
  - **If you have a reason to challenge police authority – then no offense**
  - **“purpose” – if not to commit offense but to protest officer conduct and there is a constitutional basis to do that then no offense**
- **State v. Heine, 424 NJS 48 (App. Div. 2012) – going to Supreme Court – police pounding on door to get in, occupant denies entry, police somehow get person out of house and charge with hindering – defense is that don’t have to give police access to your home**
- **US v. Myers, 700 F. Supp. 1358 (DNJ 1988)**
- **Must educate municipal court judges and prosecutors on what constitutes a violation of the statute**
- **NJSA 2C:29-3 Hindering Apprehension or prosecution. A person commits an offense if, with *purpose* to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense or violation of Title 39 of the NJ statutes or a violation of Chapter 33...**

- **2C:29-3(b) – A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation of Title 39 of the NJ statutes or a violation of Chapter 33A of Title 17 of the Revised Statutes, he...**
  - **(4) gives false information to a law enforcement officer or a civil state investigator assigned to the office of the insurance fraud prosecutor established by section 32 of PL 1998, c.21 (C. 17:33A-16).**
- **“give” – broad, anything not actually correct, false information, not necessarily under oath – would equate to probable cause to arrest**
- **Lewis v. City of New Orleans, 415 US 130 (1974) and City of Houston, Tx v. Hill, 482 US 451 (1987) - what has Supreme Court said that a person must do when confronted with zealous police officer, or when an officer is trying to enforce ambiguous statutes/ordinances – Supreme Court found many ordinances could not be enforced because being utilized to squash first amendment rights**
- **Many lawyers know that 2C:33-2(1)(b) has been deemed unconstitutional in *In re H.D.*, 206 NJS 58 (App. Div. 1985) – charge still gets lodged**
- ***State v. Duncan*, 376 NJ Super 253 (App. Div. 2005) – court said already ruled in *HD* that cannot be enforced – so then why has legislature not modified and made constitutional or deleted it**
- **In response to *State v. Valentin*, 105 NJ 15 (1987) – legislature amended 23C:29-3(b)(4).**
- **May be a political component to legislature not changing the law**
- **Rule of statutory construction is that if a court renders a decision and legislature does not change the statute –then acquiescence in court’s decision?**
- **Problem in untrained police officer reading statute and still charging an unconstitutional statute**
- **NJSA 2C:33-2(a) – Improper behavior: A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.**

- **“fighting” can also be considered under NJSA 2C:12-1(a)(3) – assault by mutual combat (PDP)**
- **NJSA 2C:33-2(b) - Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.**
  - **Unconstitutional**
  - **App Div said unconstitutional**
- **In plea bargaining – if client pleads to NJSA 2C:33-2(b), knowing it is unconstitutional, wait 1 year for statute of limitations to run then file post conviction relief – court must reverse plea/conviction but state cannot proceed to prosecute case – advise client of strategy – probably unethical (RPC 3.3a(5) candor toward the tribunal)**

**IV. Fact pattern – common denominators in these types of cases**

- **Motor vehicle stop – courts analyze what is reasonable articulable suspicion for stop**
- **If reasonable and articulable suspicion of violation of law, can stop MV – seizure under 4<sup>th</sup> amendment**
- **Police have unfettered discretion for driver to stay in or get out of call**
  - **For passengers must have some slight amount of enhanced concern for his own safety to remove passenger from car**
- **What happens depends on reaction of driver and sensitivity of police officer – lack of respect or rude conduct**
- **Triggering mechanism is combination of officer and individual driver having a bad day**
- **Police are well served by video tape – now that there is video everywhere, for everyone’s protection – officer and public**
- **Police in other states with similar wiretap laws and someone with cell phone comes by to video and videos police confrontation – if police aware of cell phone video – charge people with wiretap because not a party – is there an expectation of privacy under these situations in police encounter. (NJ Wiretap statute, NJSA 2A:156A-1 to 26).**

- **Police are under no obligation to create evidence – if they want a tape that is great, but not required on the street – consider if court rules or attorney general guidelines require: Rule 3:17 and Attorney General Directive 2006-4**
- **On the street to video is an individual decision**
- **As a defense attorney – clients deny but then see video – very beneficial to defense bar – cuts through the nonsense – helpful tool – video allows courts to actually see what was going on during confession**
- **State v. Delgado, 188 NJ 48 (2006) – Supreme Court decision relating to videotaping of confessions**
- **AG is phasing in requirement for videotaping of confessions**
- **Cops are leaning on 2C:33-2(b) – when you say something to a cop, you can call names and curse – not an offense, you have the right to criticize police in your own way – Baumgartner V. US, 322 US 665 (1944) – 1<sup>st</sup> amendment protection; Terminello v. Chicago, 337 US 1 (1949) – riot conditions in Chicago and Father Terminello gave a speech about fascists and communists and calling everyone names, inciting riots – his speech was found to be protected because not “fighting words”**
- **Police officers having a bad day or not well trained – coming on very strong, abusive**
- **Officers now are trained to a level of professionalism**
- **Driving conduct can really anger a police officer**
- **Reaction of officer to people that triggers this – abusive, combative, control situation when things are getting out of hand**
- **Racial and class component to certain situations – in extreme cases people are abused by the police**
- **Police response is that cannot have disrespect and allow person to continue because lose ability to enforce the law on the streets**
- **Rodney King was an extreme example of contempt of cop – not really a new situation**
- **People realize they have 1<sup>st</sup> amendment protections against police actions and they are out there looking to create incidents – people bringing video cameras to roadblocks because people believe that police don’t have the right to stop at roadblocks – causes more difficult police job**
- **Different economic backgrounds of individuals will create different situations – those who are less fortunate do not press the issue while those that are wealthy will fight the system and fight**

- the police – the officer then is placed in the most jeopardy because he can lose his job**
- **Some have given up on the idea that they are going to be found not guilty of everything and look for best result not a complete acquittal – others are exact opposite and going to fight – can be a cultural issue as well**
- V. How do you defend these cases**
- **Attorneys must familiarize themselves with 18 USC 1983 – civil rights cases – police no longer have qualified immunity**
  - **If defendants have the wherewithal they will go from municipal court for dismissal to federal court by suing the officer**
  - **Charging police officer can be done at any point in time – worst scenarios is when client has already filed an internal affairs complaint because already an uphill battle to address the case in municipal court – makes things personal with the police officer**
  - **Do not recommend filing charges against police officer early on – wait until attorney can evaluate the case**
  - **Clients are not necessarily completely innocent**
  - **State v. Gookins, 135 NJ 42 (1994) – officer was soliciting bribes from people he stopped for DWI and if did not pay bribe then filed DWI charges, people pled guilty to DWI as opposed to contesting cases even though there was no evidence against them – completely contrived cases – this case came out during the time of breathalyzers where officers had more control over the machine vs. alcotest – readings could be falsified**
  - **Alert client to issues and know rude and immoral and disrespectful to police is not an offense – but are you going to win at municipal court level?**
  - **How much money does the client have to fight the case? The lower courts will not find in favor of the defendant – must take the case up to App Div and Supreme Court on constitutional grounds.**
  - **Political issues involved with police and judges that don't allow judges to find officers not credible**
  - **Defense counsel must take these political considerations into account – don't want to embarrass officer – attribute problem to something that officer has no control over as opposed to accusing officer of misconduct**

- **Advise client that they may not be guilty of what they are charged with but how far do they want to go to defend and get result they are trying to get?**
- **If prosecutor offers an ordinance violation – is this unethical behavior to accept plea if ordinance is pre-empted? – advise client of reality of the situation – benefits of the ordinance – give client choice**
  - **NJSA 2C:1-5(d) – pre-emption issue: State v. Pischeria, 356 NJS 461 (App. Div. 2003) – legislature gets to decide improper/disorderly conduct things and laws that are drafted by local municipalities may be pre-empted by Code of Criminal Justice. See also State v. Crawley, 90 NJ 241 (1982) and State v. Felder, 329 NJS 471 (App. Div. 2000).**
  - **Can you plea bargain when ordinance is pre-empted?**
  - **If judge does not realize pre-emption issue, do you have a Candor before the Tribunal issue?**
  - **Mutuality of advantage – client gets ordinance violation which is expungeable in 2 years, town keeps all fines, and there is a quick disposition of the matter**
  - **Useful tools for the municipal prosecutor to have in order to resolve cases**
- **It may be that in the future the pre-emption statute should allow for some disorderly conduct by an ordinance violation**
- **Consequences of record (disorderly persons v. ordinance violation)**
- **De minimis statute: NJSA 2C:2-11 – hard to utilize statute**
- **Every once in a while need to try these cases**
- **Defense attorneys should get a handle on these cases – there is a great deal of conduct that the US Supreme Court is willing to overlook**
- **Be prepared to fight if you decide to try these types of cases**
- **Do homework and do legal research – file brief setting out the law**
- **Speech must create an immediate breach of the peace – inciting people – do something to interfere with police or create a riot type condition**
- **If you try the case there are 2 strategies:**
  - **Admit the act and win the case: everything officer said is true however his conduct is protected**

- **If factual fight – realize enemy for life with police officer and his buddies – but you have a client to represent and you must do your job as a defense attorney**