

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

LEAVING THE SCENE OF AN ACCIDENT

With

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Program description

This CLE takes a magnifying glass to NJSA 39:4-129, and its companion statute 39:4-130, in a thorough effort to best prepare defense attorneys and municipal court prosecutors when a defendant is charged with leaving the scene of an accident in New Jersey.

I. Introduction

- **Christopher Hewitt – one of the attorneys in *State v. Chun*, 194 NJ 54 (2008)**

II. Statutes

- **NJSA 39:4-129 – Action in case of accident (Leaving the Scene)**
- **NJSA 39:4-130 – Immediate notice of accident; written report**
- **Statute is unique – only statute that requires a lifetime suspension of driving privileges if convicted of leaving the scene in 2nd or subsequent with injuries or death**
- **Chapter 3 of MV code – option for CDLs to be suspended for life – but mechanism to apply for license returned in 10 years – no such provision in leaving the scene**
- **Only person liable is the driver of the vehicle**
- ***Podias v. Mairs*, 394 NJS 338 (App. Div. 2007) – passengers who had knowledge of driver’s involvement had duty of care to the victim of the accident not to allow driver to cover up accident**
 - **This case changes 100s of years of common law in NJ**
 - **Normally someone who sees an injury does not have obligation to come to aid of injured person**
 - **This case changes the common law**
 - **This case was 2 guys who were passengers in the car and knew driver was intoxicated; man standing in roadway; car went off embankment – debating whether they hit the man; driver wanted to leave; passengers had phones but did not call police and did nothing; affirmative duty to take action to help the man they hit – only needed to call the police; man ended up dying**
 - **Duty extended to the passengers of the vehicle of an intoxicated driver because they had knowledge**
 - **Not necessarily criminal in nature**
- **39:4-129 – quasi-criminal case – liability only imposed on driver by statute**
- **39:4-130 – duty on passenger to call report accident when the driver is unable to report**
- **NJSA 39:4-129 “(a) The driver of any vehicle, knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in**

every event shall remain at the scene until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any person who shall violate this subsection shall be fined not less than \$2,500 nor more than \$5,000, or be imprisoned for a period of 180 days, or both. The term of imprisonment required by this subsection shall be imposed only if the accident resulted in death or injury to a person other than the driver convicted of violating this section.

In addition, any person convicted under this subsection shall forfeit his right to operate a motor vehicle over the highways of this State for a period of one year from the date of his conviction for the first offense and for a subsequent offense shall thereafter permanently forfeit his right to operate a motor vehicle over the highways of this State.

- **Presumption of knowledge when someone is injured**
- **Statute covers 4 different types of conduct:**
 - **1) accident with personal injury**
 - **2) accident with attended property damage**
 - **3) accident with unattended property damage**
 - **4) what you are expected to do at the scene**
- **How much aid are you required to render? Do you have a duty to render aid?**
- **UDDA – Uniform Determination of Death Act – any type of cessation of either brain stem function or heart function – definition of death**
- **“injury” is not defined in the statute – de minimis concept – sensation of pain is sufficient to trigger – not a great deal of pain to trigger**
- **NJSA 39:4-129 “(b) The driver of any vehicle knowingly involved in an accident resulting only in damage to a vehicle, including his own vehicle, or other property which is attended by any person shall immediately stop his vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any person who shall violate this**

subsection shall be fined not less than \$200 nor more than \$400, or be imprisoned for a period of not more than 30 days, or both, for the first offense, and for a subsequent offense, shall be fined not less than \$400 nor more than \$600, or be imprisoned for a period of not less than 30 days nor more than 90 days or both.

In addition, a person who violates this subsection shall, for a first offense, forfeit the right to operate a motor vehicle in this State for a period of six months from the date of conviction, and for a period of one year from the date of conviction for any subsequent offense.”

- **No question of fault**
- **No question of who sustained damages**
- **Mere involvement in the accident is the issue**
- **Liability is triggered by the mere accident**
- **Statute does not refer to extent of damage to vehicle – even a little damage, *de minimis* damage would qualify as damage**
- **NJSA 39:4-129 “(d) The driver of any vehicle which knowingly collides with or is knowingly involved in an accident with any vehicle or other property which is unattended resulting in any damage to such vehicle or other property shall immediately stop and shall then and there locate and notify the operator or owner of such vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property or, in the event an unattended vehicle is struck and the driver or owner thereof cannot be immediately located, shall attach securely in a conspicuous place in or on such vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking or, in the event other property is struck and the owner thereof cannot be immediately located, shall notify the nearest office of the local police department or of the county police of the county or of the State Police and in addition shall notify the owner of the property as soon as the owner can be identified and located. Any person who violates this subsection shall be punished as provided in subsection (b) of this section.”**
 - **Unattended property**
 - **No minimum threshold for amount of damage to trigger obligations under the statute**

- **Obligation to go to police department or leave a note so that property owner can find you**
- **Any time a client walks into your office with this charge – looking at mandatory license loss**
- **NJSA 39:4-129 “(c) The driver of any vehicle knowingly involved in an accident resulting in injury or death to any person or damage to any vehicle or property shall give his name and address and exhibit his operator's license and registration certificate of his vehicle to the person injured or whose vehicle or property was damaged and to any police officer or witness of the accident, and to the driver or occupants of the vehicle collided with and render to a person injured in the accident reasonable assistance, including the carrying of that person to a hospital or a physician for medical or surgical treatment, if it is apparent that the treatment is necessary or is requested by the injured person.**

In the event that none of the persons specified are in condition to receive the information to which they otherwise would be entitled under this subsection, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (a) and (b) of this section, insofar as possible on his part to be performed, shall forthwith report such accident to the nearest office of the local police department or of the county police of the county or of the State Police and submit thereto the information specified in this subsection.”

- **Obligations of a motorist involved in an accident**
- **5th amendment issue? Or pedigree information?**
- **Presenting license is not testimonial in nature – merely identifying yourself – no Miranda implications**
- **Anyone who wants to see your driving credentials must be shown**
- **Affirmative duty to render reasonable assistance**
- **No element in the offense that you would be punished if do not render assistance**
- **Let professional people render aid – call the police and report the location – question whether you can render aid if you don't have the proper training**
- **State v. Fisher, 180 NJ 462 (2004) – serious case and involved the death of the accident victim; Fisher who struck man and left the**

- scene realized the next day that it was he who hit the man; argued that by reporting himself he was incriminating himself and had a 5th amendment right; court said act of identifying yourself is not an element of the offense and disclosure does not implicate 5th amendment
- **Maryland v. King, 569 US ____ (2013) – booking procedures exception to the 4th amendment; police have a right to extract information from you such as pedigree and that information is an exception to the 4th and 5th amendments; fingerprints are an exception under booking procedures for 4th amendment; this case dealt with buccal swabbing of the mouth upon arrest for serious offenses and said police can take your DNA in this way – booking exception; 5th amendment does not protect pedigree because not testimonial; judge can take into consideration if you don't cooperate with providing pedigree information**
 - **NJSA 39:4-129 “(e) There shall be a permissive inference that the driver of any motor vehicle involved in an accident resulting in injury or death to any person or damage in the amount of \$250.00 or more to any vehicle or property has knowledge that he was involved in such accident.**

For purposes of this section, it shall not be a defense that the operator of the motor vehicle was unaware of the existence or extent of personal injury or property damage caused by the accident as long as the operator was aware that he was involved in an accident.

There shall be a permissive inference that the registered owner of the vehicle which was involved in an accident subject to the provisions of this section was the person involved in the accident; provided, however, if that vehicle is owned by a rental car company or is a leased vehicle, there shall be a permissive inference that the renter or authorized driver pursuant to a rental car contract or the lessee, and not the owner of the vehicle, was involved in the accident, and the requirements and penalties imposed pursuant to this section shall be applicable to that renter or authorized driver or lessee and not the owner of the vehicle.

Any person who suppresses, by way of concealment or destruction, any evidence of a violation of this section or who

- suppresses the identity of the violator shall be subject to a fine of not less than \$250 or more than \$1,000.**
- **Cannot have a presumption in a criminal or quasi-criminal case because shifts the burden**
 - **Permissive inference means that this is something the fact finder is either free to adopt or to reject – if evidence suggests that a person had a sensation of pain from the accident, the judge can draw the inference that the driver knew he was in an accident [or quantity of damages]**
 - **In the absence of evidence to the contrary, unclear whether judge should just not accept it as fact**
 - **Permissive inference is powerful tool for prosecutor**
 - **State v. Walton, 388 A.2d 268 (App. Div. 1978) – remanded for new trial because judge shifted burden to defendant to overcome the presumption**
 - **Doesn't say the judge can presume that registered owner was the driver – only that the person was involved in the accident**
 - **Accident where car crashes into a tree – 1 person is intoxicated and 2 not talking; won't disclose who was driving; are they suppressing the identity of the driver? Do they have a right to remain silent?**
 - **Rule 503 – Self Incrimination; NJSA 2A:84A-19; common law; and due process clause – all these provide for 5th amendment protection in NJ because not written in our constitution**
 - **Rule 503: “[E]very natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule:**
 - (a) no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition;**
 - (b) no person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise a document, chattel or other thing under his control if some other person or a**

corporation or other association has a superior right to the possession of the thing ordered to be produced;

(c) no person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling, or governing the corporation or association of which he is an officer, agent or employee, require him to record or report or disclose except to the extent that such statutes or regulations provide that the matter to be recorded, reported or disclosed shall be privileged or confidential;

(d) subject to the same limitations on evidence affecting credibility as apply to any other witness, the accused in a criminal action or a party in a civil action who voluntarily testifies in the action upon the merits does not have the privilege to refuse to disclose in that action, any matter relevant to any issue therein.

- **Quasi criminal action but still have constitutional protections – just not trial by jury**
- **Does driver himself refuse to cooperate and then is there a 5th amendment right?**
- **Is pedigree information conduct that is not a statement? Not a statement about elements of the offense**

III. Plea bargaining

- **When personal injury involved – have client plead guilty to (b) or (c) because that is only property damage**
- **Points associated with offense: section a – 8 points; sections b or c – 2 points**
- **NJSA 39:4-130 – distinctly different charge, no points, cap on fines at \$100; accident with death or personal injury has a duty to report to the police**
 - **“The driver of a vehicle or street car involved in an accident resulting in injury to or death of any person, or damage to property of any one person in excess of \$500.00 shall by the quickest means of communication give notice of such accident to the local police department or to the nearest office of the county police of the county or of the State Police, and in addition shall within 10 days after such accident forward a written report of such accident to the**

commission on forms furnished by it. Such written reports shall contain sufficiently detailed information with reference to a motor vehicle accident, including the cause, the conditions then existing, the persons and vehicles involved and such information as may be necessary to enable the chief administrator to determine whether the requirements for the deposit of security required by law are inapplicable by reason of the existence of insurance or other circumstances.”

- **Big tool for plea bargaining – negotiate for prosecutor to amend**
- **Must advise client that 39:4-129 – be prepared to lose your license and hope that you can negotiate for 4-130**
- **Make sure insurance has taken care of other person’s property and put their own insurance company on notice that there was an accident**
- **Making the victim whole is an important part of negotiating these cases – client can pay for deductible**
- **In re Friedland, 59 NJ 209 (1971) – deals with the exchange of money that will impact the dismissal or plea bargaining of cases; holding requires that there be a finding by prosecutor and judge that whenever money is exchanged between money and victim that the prosecutor knows about it and to put on the record that it is in the interest of justice**
- **Client should be prepared to pay in cash – don’t pay but be prepared to pay**
- **Have a hearing regarding restitution – finding on the record in the interest of justice and then client can pay**
- **Before any money is exchanged – be sure that it is on the record that the judge and prosecutor agree it is in the interest of justice**
- **Prosecutors want to hear that you have taken the steps to make the victim whole**

IV. New criminal statute

- **NJSA 2C:12-1.1 Knowingly leaving the scene of a motor vehicle accident resulting in serious bodily injury, third degree crime.**

“2. A motor vehicle operator who knows he is involved in an accident and knowingly leaves the scene of that accident under circumstances that violate the provisions of R.S.39:4-129 shall be guilty of a crime of the third degree if the accident results in

- serious bodily injury to another person. The presumption of nonimprisonment set forth in N.J.S.2C:44-1 shall not apply to persons convicted under the provisions of this section.**
- If the evidence so warrants, nothing in this section shall be deemed to preclude an indictment and conviction for aggravated assault or assault by auto under the provisions of N.J.S.2C:12-1.”**
- **“Serious bodily injury” – 2C:11-1b – bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ**
 - **If you have a client charged with 4-129 and want him to plead guilty, no other charges pending – should you plead your client guilty?**
 - **Do you have an affirmative obligation to tell the prosecutor that this is an indictable offense? Recommend that the matter be sent to the prosecutor’s office?**
 - **In re Seeling, 180 NJ 234 (2004) – candor toward the tribunal, and RPC 3.5**
 - **2B:12-17.2 Motor vehicle matters involving death, bodily injury, Superior Court exclusive jurisdiction; prosecution guidelines.**
“1.a. In any matter concerning Title 39...where death or serious bodily injury has occurred, regardless of whether the death or serious bodily injury is an element of the offense or violation, the Superior Court shall have exclusive jurisdiction over the offense or violation until such time that the Superior Court transfers the matter to the municipal court. For the purposes of this section, the term “serious bodily injury” shall have the meaning set forth in subsection b of NJS 2C:11-1.”
 - **Any time someone is charged with 4-129a – case should automatically go to the county prosecutor’s office; jurisdiction exclusively in superior court and municipal court did not have jurisdiction to adjudicate the offense**

V. Advice to attorney

- **Most cases plea to 4-130**
- **The system unofficially works – the average prosecutor and amends to a 4-130**
- **If prosecutor has an angry victim then that must be considered in plea bargaining**

- **Never good to take an adversarial posture with a victim – victim can help you to negotiate a plea – see what victim’s needs are and then see how those needs can be satisfied**
- **NJSA 39:5-52 – Information to Victim – victim’s rights act**
 - **Different from constitutional right as a victim of a crime**
 - **“A victim of a motor vehicle accident as defined in this section shall, upon his request, be provided in writing by the court adjudicating any offense committed during that motor vehicle accident with the following information:**
 - (1) Information about the victim's role in the court process;**
 - (2) Timely advance notice of the date, time, and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;**
 - (3) Timely notification of the case disposition, including the trial and sentencing;**
 - (4) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and**
 - (5) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant.”**
 - **“As used in this section, "victim" means, unless otherwise indicated, a person who suffers death, or any personal, physical, or psychological injury as a result of a motor vehicle accident. In the case of death, "victim" means a surviving spouse, child, or the next of kin.”**
 - **Property damage does not equate to “victim”**
 - **“b. A victim shall be provided with an opportunity to consult with the prosecutor prior to a dismissal of a case or the filing of a proposed plea negotiation with the court if a victim suffered death or sustained bodily injury or serious bodily injury as defined in N.J.S. 2C:11-1.**
 - c. This section shall not be construed to alter or limit the authority or discretion of the Supreme Court to regulate the practice of plea agreements in municipal court, or alter or limit the authority or discretion of a prosecutor.”**
- **Tell victim that what happens in court would not limit ability to sue whoever you want**
- **Victim rights are in play for leaving the scene cases**

- **Prosecutors may not take the time to speak with the victim**
- **Prosecutor has to sell the plea offer to the victim – stay away from victim if the prosecutor is going to speak with them and confirm that victim accepts plea – don't interfere**
- **Thank victim on the record for being in court – maybe volunteer for victim to put their story on the record**
- **NJSA 39:5-3(b) “A complaint may be made to a judge for a violation of R.S.39:3-12, R.S.39:3-34, R.S.39:3-37, R.S.39:4-129 or R.S.39:10-24 at any time within one year after the commission of the offense; for a violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a), section 5 of P.L.1990, c.103 (C.39:3-10.13), section 16 of P.L.1990, c.103 (C.39:3-10.24), section 3 of P.L.1952, c.157 (C.12:7-46), section 9 of P.L.1986, c.39 (C.12:7-57), R.S.39:3-40, or section 1 of P.L.1942, c.192 (C.39:4-128.1), at any time within 90 days after the commission of the offense.”**
- **Extended statute of limitations because time it takes to investigate cases to locate offender**