

05/23/05 - 11:45 pm] Earlier today, the Appellate Division ruled that under Article I, Paragraph 7 of the New Jersey Constitution, police must obtain a search warrant in order to obtain a utility's records related to the useage of electricity in an individual's home.

The facts in State v. Domicz involve an investigation that began when the police learned that the defendant had obtained certain, unspecified packages of equipment from a local company that sold plant growth equipment. This fact aroused the suspicion of the police who then obtained a subpoena for the defendant's electrical useage records from his utility. Thereafter, the police used a "thermal scan" on the defenfant's home in order to ascertain whether any extraordinary heat was being generated within.

Since none of these investigative techniques provided the police with sufficient evidence to establish probable cause to believe that any crime was being committed by the defendant or to believe that evidence of a crime was inside the defendant's house, the investigating officers went to the defendant's house in force in order to speak to him. According to the police, the defendant voluntarily consented to a search of his home, the result of which was the discovery of marijuana plants growing inside sufficient to constitute a crime of the first degree.

The Appellate Division's decision in Domicz is enormously important. Please pay special attention to the following points:

1. The Court notes that the police must have a reasonable suspicion before requesting consent to search a home. This requirement has previously only come up in the context of searches of motor vehicles (See State v. Carty). The Domicz holding expands this requirement for the first time and without discussion to searches of homes.
2. There is an excellent review of every case in New Jersey search and seizure jurisprudence where a Court has extended enhanced protections under the New Jersey Constitution.
3. Note that the Court states that New Jersey law enforcement should have been able to predict that thermal scans of homes would be considered an illegal investigative technique, notwithstanding that the United States Supreme Court case that found this practice to be unreasonable under the 4th amendment was not published until a year after the police conducted the thermal scan in this case.
4. The Court also holds that evidence obtained from a consent search will be excluded if it results either directly or indirectly from illegal police conduct.

A copy of State v. Domicz is attached to this muni-mail.

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