

Defense of Drug Possession Cases in Municipal Court

1. What are my chances of beating a drug possession charge in Municipal Court?

The defense of a person charged with possession of Controlled Dangerous Substances (CDS) is not impossible. There are many viable defenses and legal arguments that can be used to beat any type of drug possession charge. Drug related offenses have serious penalties. However, the collateral consequences of having a drug conviction are that it will haunt you for life. Having a criminal record will make it much more difficult to find a job. Moreover, it will also make it very hard to get licenses in many different types of professions. Finally, it may make it more difficult and expensive to obtain many different types of insurance. Given this backdrop it is critically important to zealously fight any type of drug possession charge. The prosecutor handles hundreds of cases per month. If you work the case hard, then you may be able to wear down the prosecutor. Unfortunately, in many cases in the Municipal Court it seems that the prosecutor gets all of the breaks. However, in my experience the harder you work the case, then the better the chance you have of obtaining a reduced charge.

2. What types of drug charges are filed in Municipal Court?

A Municipal Court only has jurisdiction of disorderly persons drug offenses. If a drug charge involves any type of distribution, or if a defendant is busted with large quantities of CDS then the case is sent up to the County. Thereafter, the County Prosecutor will review the case and determine if the case should be indicted.

There are eight drug charges that are considered to be disorderly persons' offenses. These offenses are as follows:

- a. Possession of Marijuana - N.J.S.A. 2C:35-10(a)(4).
- b. CDS Use or Under Influence - N.J.S.A. 2C:35-10(b).
- c. Failure to deliver CDS to officer - N.J.S.A. 2C:35-10(c).
- d. Toxic Chemicals - N.J.S.A. 2C:35-10.4.
- e. Prescription legend drugs - N.J.S.A. 2C:35-10.5.
- f. Possession of certain prescription drugs - N.J.S.A. 2C:35-24.
- g. Possession of drug paraphernalia - N.J.S.A. 2C:36-2.
- h. Discarding hypodermic needle or syringe - N.J.S.A. - 2C:36-6.1.

3. I was just busted for the possession of marijuana. I don't want to get a criminal record just because I like to get wasted. Is there any way that I can beat these charges?

Yes, you can apply for a conditional discharge. This is a diversionary program for first time offenders with a drug offense(s). If a defendant qualifies for a conditional discharge program, then after six months to a one year period, the charges will be dropped. The decision to grant a defendant a conditional discharge is within the sole discretion of the Municipal Court judge. However, before the court grants any application for a conditional discharge, the judge must be satisfied that the defendant was never granted a prior conditional discharge. Moreover, the judge must also make a finding that the defendant will not pose any danger to the community, and that he will most likely benefit from the program.

In most conditional discharge programs the defendant is placed on supervised probation. The defendant may also be required to undergo either inpatient or out patient drug counseling. The defendant must also pay some heavy fines. The defendant is required to pay a \$50 V.C.C.B. assessment, and a \$75 Safe Neighborhood Fund (S.N.F.) assessment. Moreover, the defendant must pay a \$500 Drug Enforcement and Demand Reduction (D.E.D.R.) penalty. Finally, the defendant will also have to pay a \$50 D.A.R.E. penalty and a \$50 lab fee.

In some cases it may be difficult to get a defendant into a conditional discharge program. Therefore, you should be prepared to provide the court through letters, documents, or even witnesses, that the defendant should not be locked up. Moreover, you should try to prove to the judge that the defendant has a bright future. Finally, you should make an argument to the court that the defendant is not "Hannibal Lectre" or a terrorist, and that he won't commit any new offenses once the case is over. The conditional discharge period is typically between twelve months and two years. If the defendant is convicted of any drug offense during the conditional discharge period, or if he violates any of the conditions established by the court or by probation, then the case will be reopened. Thereafter, the defendant will have to once again face the original charges. If he is found guilty of the original drug possession charge, then he will now have a criminal record. Good luck finding a job in this economy with a criminal record! Therefore, it is always advisable to make the most out of being accepted into a conditional discharge program.

4. Why is important to conduct full discovery in any drug possession charge in Municipal Court?

In some Municipal Courts the odds of having a drug possession charge reduced is simply impossible. The practice and customs of

each Municipal Court vary greatly. However, I want to emphasize that there is less of a stigma to beating a drug possession charge than there is for a DWI case in Municipal Court. Many Municipal Courts will be less hesitant "to buy" a legal defense in a CDS case than it will be in a DWI case. A defendant might as well come to court in a devil costume along with a pitch fork if he is charged with a DWI. The Municipal Courts are not as zealous to convict a defendant for a CDS charge as they are for a DWI. The ultimate outcome of a Municipal Court drug possession case varies considerably all throughout the state. Therefore, if you can sniff out that the prosecutor is going to be "hard core" then you must conduct diligent discovery. If you obtain or seek full discovery, then you may be able to beat the case on a loophole, or on a viable legal defense.

The State is legally responsible for providing the defendant with full and complete discovery. See, Rules 3:13-3, 7:7-7, State v. Polasky, 216 N.J. Super. 549 (Law Div. 1986); State v. Tull, 234 N.J. Super. 486 (Law Div. 1989); State v Ford, 240 N.J. Super. 44 (App. Div. 1990). With the law on your side it is extremely important to obtain full discovery. If you are forced to have a trial then it will be impossible to adequately cross-examine the police officers if you don't have it.

Most Municipal Courts are extremely swamped. You may find that it is very difficult to obtain discovery. If you encounter this problem then you should file a motion to dismiss your case for the failure of the state to provide discovery. Believe it or not you may be able to beat a drug possession charge in Municipal Court if you make legitimate discovery objections. The State has to provide you with all of the evidence before the trial can start. In many cases the prosecutor will fail to comply with this responsibility. Additionally, you can use any discovery errors or miscues to try to "beat up" the prosecutor and convince him to reduce the drug possession charge to a municipal ordinance offense. It is almost impossible to convince a prosecutor to outright dismiss a drug possession case.

5. Why is it important to object to a lab report in any drug possession case?

The prosecutor is legally required to prove that the seized evidence is actually CDS. To prove that the substance is actually CDS the prosecutor can call the lab tech to testify at trial. Thereafter, the lab tech will testify that he conducted several tests on the evidence and that the substance was indeed a CDS. In most Municipal Court drug cases the prosecutor will not call a lab tech to testify. This process is very expensive. Moreover, trial dates are constantly adjourned. It would be an administrative nightmare for the Municipal Courts if they were forced to call a lab tech to testify for every CDS case.

The State will almost always seek to admit the lab certificate that was prepared pursuant to N.J.S.A. 2C:35-19. If the prosecutor intends to proffer the lab certificate at trial then he must file a notice of an intent to proffer that certificate, and all other reports that relate to the analysis of the CDS. The prosecutor must send a copy of this notice to defense counsel at least 20 days before the trial starts. Thereafter, defense counsel must within 10 days of receiving this notice of proffer, notify the prosecutor in writing of the defendant's objection to the admission of the lab certificate into evidence. Moreover, defense counsel must also set forth any grounds to justify the objection. See, N.J.S.A. 2C:35-19(c). See, State v. Simbara, 175 N.J. 37 (2002); and Crawford v. Washington, 541 U.S. 36 (2004). Unfortunately, if defense counsel fails to timely object to the notice of proffer, then this will be considered to be a waiver to any objection to the certificate. Thereafter, the lab certificate will be admitted into evidence.

6. The prosecutor wants to "fry me" and he won't reduce my drug possession charge. Can you please provide me with some tips that I can use at my forthcoming trial?

You should subpoena any witnesses, sometimes even serving a subpoena duces tecum on the back-up officer to compel him to bring to court any CDS that he allegedly observed in plain view. The police officer's credibility will be tested when the CDS that was alleged to be in plain view inside a vehicle is actually very small and is only one half of an inch long.

7. What is the best loophole that I can use to try to beat a drug possession charge?

A critical issue that arises in many drug possession cases is what actually constitutes constructive possession. The State must prove that the defendant had knowledge or purpose to possess CDS. The state must also prove that the defendant purposefully intended to possess the CDS. The legal term purpose means that it was the defendant's conscious object to obtain or possess the CDS. See, 33 N.J. Practice, Criminal Law and Procedure (Miller), Sec. 378 p. 563 (2nd Ed 1990).

If the prosecutor can't prove that the defendant had actual possession then he may try to prove constructive possession. Constructive possessive can be established by proving that the defendant had dominion and control over the CDS. If two or more defendants share the actual or constructive possession of the CDS, then their possession is considered to be joint possession. The mere presence of a defendant on the premises with other defendants where the CDS was seized is not sufficient by itself to obtain a conviction. This factor alone can't be used to justify any inference that a defendant was in sole or joint possession of the CDS. State v. McMenamin, 133 N.J. Super. 521,

524 (App. Div. 1975).

An illustrative case is State v. Shipp, 216 N.J. Super. 662, 666 (App. Div. 1987). Here, the court held that there was insufficient evidence to prove that the defendant, who was a passenger in the front seat, had constructive possession of CDS. The CDS was contained in envelopes that were hidden in a vinyl bag. This bag was resting on the back seat and it was located next to another passenger in the car.

8. What also must the State prove to obtain a conviction for drug possession in Municipal Court?

The State must establish the chain of custody. At trial the prosecutor will call witnesses to prove the location of the seized drugs from the time that it was seized to the testing of the CDS. In many cases the custodians of the seized evidence may not be available to testify. Therefore, you should always make objections on chain of custody issues if the prosecutor does not "have all of his ducks lined up."

The prosecutor may also try to introduce the defendant's confession as evidence at any trial. If the prosecutor attempts to introduce a confession or any other incriminating statements, then you should file a motion for a Miranda hearing, and attempt to suppress the statements. Any confessions could be suppressed under the seminal case of Miranda v. Arizona, 384 U.S. 436 (1966).

9. What are the financial considerations after being convicted of a drug offense in Municipal Court?

The financial consequences for a Municipal Court drug offense are severe. The combinations of drug penalties, fees, and assessments easily total several thousands of dollars. Moreover, a defendant could also lose his driver's license for a period of six months to two years. Moreover, you will have to pay a lawyer at least a retainer of \$750 to \$1,000. Therefore, it is advisable to live a good clean life. I am certain that no type of recreational drug use will be worth the several thousand dollars that it will cost you to deal with a Municipal Court drug charge.

10. How can a Municipal Court drug offense(s) be expunged?

If the charges against the defendant are dismissed as a result of a conditional discharge, then the drug charges may be expunged after a waiting period of six months. In the event that a defendant wants to expunge a Municipal Court drug conviction then there is a five year waiting period to be eligible.