

# New Jersey Supreme Court Rules that Weapons Seized Pursuant to a Domestic Violence Restraining Order Can be Used in a Criminal Prosecution

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On August 16, 2012, in [State v. Carlton Harris](#), the Court considered whether weapons recovered from a defendant's premises during a search conducted pursuant to a warrant issued upon "reasonable cause" under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, may be admitted in a subsequent criminal prosecution of defendant for possession of those weapons consistent with Article I, paragraph 7 of the New Jersey Constitution and the Fourth Amendment of the United State Constitution, which require "probable cause" to issue a warrant to search a home.



As a backdrop, it is important to understand that under N.J.S.A. 2C:25-28(j) (a section

of the Domestic Violence Law) a court may order "the search for and seizure of any such weapon at any location [it] has reasonable cause to believe the weapon is located." That is, if an individual seeks and obtains a Temporary Restraining Order (TRO) and alleges, for example, that the individual against whom the TRO is entered has weapons in his or her home, law enforcement personnel may enter and search the residence of that individual for the weapons. The search is based on a "reasonable cause" standard.

On the contrary, as we all know from Law & Order, CSI: Miami, etc., generally, both the New Jersey Constitution and the Fourth Amendment of the United State Constitution, require "probable cause" (a much higher standard) to issue a warrant to search a home.

Here, the New Jersey Supreme Court held that even though the initial entry into the home of law enforcement personnel as the result of a TRO is based on the lesser “reasonable cause” standard, if the “illegal nature” of the weapons found during the domestic violence search of a criminal defendant’s premises are immediately apparent (think, for example, an uzi, “Tommy” gun, or assault rifle with extended ammunition magazine) without a further search, the weapons may be admissible in a criminal proceeding.

This is an important case because, generally, [family law/domestic violence practitioners](#) and criminal defense attorneys assume that weapons seized as the result of a TRO cannot be used in a later [criminal](#) prosecution; that notion is now dispelled.

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