

My Son Was Arrested For Having Fireworks; Will He Go To Jail?

July 3, 2014 | by Einhorn Barbarito

My teenage son was stopped and arrested after crossing the Pennsylvania boarder into New Jersey. His car was searched and they found fireworks. The police said that they have “probable cause” to stop any car with New Jersey or New York plates crossing the border in this area because it is a known that fireworks are being sold. Is this true? He is supposed to start college in the fall. Will he go to jail?

I.M.

Dear I.M.:

Your question about the stop of your teenage son, the search of the car and the charge for possession of fireworks raises a number of legal issues. Possession of fireworks is prohibited in New Jersey. The prohibition is governed by the provisions of the fireworks statute which differentiates between dangerous fireworks and other types of devices under the fireworks category. The potential charges range from a petty disorderly person's offense carrying a 30-day jail sentence and \$500 fine to a 4th degree offense of possession with intent to sell carrying up to 18 months in jail and a \$10,000 fine.

You did not identify the age of your son. If he is less than 18 years of age, he will be subject to prosecution as a juvenile. If he is 18 years or older, he will be treated as an adult and subject to adult prosecution. If this is his first offence, there is a presumption against incarceration so that the probability of a jail sentence is minimal. If he has not received any prior diversionary treatment either as a juvenile or an adult, he would be eligible to make an application for admission into a Pre-Trial Intervention Program (PTI). Entry into that program would permit him to be divested from the traditional criminal justice system and placed into a form of probation. If he were to successfully

complete the probation, the charges against him would be dropped and, he could seek an expungement of his records by filing a Petition for Expungement. However, if he did not successfully complete the probation or was charged and/or convicted of another offense, he would be terminated from the program and would have to face the original charges.

Based upon the facts that you describe, there are significant legal issues which may exist in your son's case. Contrary to the assertions of the arresting Police Officers, they do not have the right to make random vehicle stops and subsequent searches. New Jersey Courts limit the Police's right to conduct automobile searches more than most jurisdictions. The police must have probable cause or some other recognized basis to stop a vehicle. The probable cause concept requires reliable and sufficient facts justifying the belief that a crime has been committed and the search or seizure will yield the evidence of a crime. The existence of probable cause is determined under a "totality of the circumstances" test. Each determination is fact sensitive. The mere fact that your son was traveling between two states and crossing on the bridge would not provide a legal basis to stop the vehicle in order to search it. Under the circumstances, a knowledgeable criminal defense attorney would file a Motion to Suppress all of the evidence, including the fireworks, due to the failure of the State to obtain a warrant. Police are required to obtain a warrant unless an exception to the warrant requirement exists.

The Police are, however, permitted to set up roadblocks (for example, DUI/DWI Checkpoints) but must do so pursuant to a specific procedure which must withstand constitutional scrutiny. Roadblocks are only deemed constitutionally proper if the particular roadblock complies with the discrete methods of investigation which justify Police intrusion on the traveling public. A roadblock or checkpoint must be established for a specific need and to achieve a particular purpose, be set up by Police command authority, and proper notice must be provided to the general public. Your question does not indicate that a roadblock or checkpoint was established, but, rather, the Police said they had the right to randomly stop vehicles crossing a bridge between 2 states. Based on those facts, a stop could be deemed illegal and any resulting search would be deemed unconstitutional. The evidence could be suppressed. The fireworks would then not be admissible, leaving the State without the proof necessary to get a conviction. Unfortunately, your description of the facts does not describe how the fireworks were discovered by the Police. That fact would raise other issues. Even if, the vehicle stop were deemed appropriate, the Police do not have the ability to make searches of a car without

probable cause or the existence of exigent circumstances. If the Police report discloses some basis for the stop, the issue would then turn to whether an exigent circumstance existed and, in addition, where the fireworks were discovered. Since fireworks are a form of explosive devices, the Police could contend an exigent circumstance existed requiring a search without a warrant. The Police might also contend that your son gave consent to search. However, to be effective, consent must be freely and voluntarily given which means that the Police were required to advise your son that he had a right to refuse a search.

A full analysis of the legal issues cannot be made without first hearing your son's version of events and then obtaining the police reports to determine the police version. Therefore, you should consider hiring a qualified criminal defense attorney to represent your son.