
CRIMINAL LAW UPDATE

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March 2004

new jersey cases

Does the *No Early Release Act* (before its 2001 amendment) apply to Vehicular Manslaughter cases?

An assemblywoman and state senator each testified that *NERA*, indeed, applied to vehicular manslaughter, and our Supreme Court in *State v. Ferencsik* (1999) agreed. So naturally the answer to whether it applies to Vehicular Manslaughter is... no, *NERA* does not apply. So says the Appellate Division in *State v. Jarrells* (1/7/04). No, the Appellate Division cannot overrule the Supreme Court, but it can decide legal arguments that had not been previously made. Here, the Appellate Division relied upon the ruling in *State v. Manzie* that *NERA* does not apply to offenses which already, by their own terms, carry a parole ineligibility term. The court held that having a statute itself set a parole ineligibility term, and then having *NERA* seemingly impose a completely different one, creates ambiguity and confusion, thus violating the defendant's due process right to know with reasonable certainty what punishment he/she will face for the crime. Since the vehicular manslaughter charge carries, under certain circumstances, a term of parole ineligibility, *NERA* should not apply since the legislature has already spoken. The legislature, in rushing to enact so many mandatory minimum sentences it cannot keep track of them, seems to have been hoisted on its own petard. Now, I have know idea what a petard is, but I suspect you don't want to be hoisted on anyone's, much less your own.

A police policy of releasing a DWI arrestee only to a responsible relative or friend is reasonable in light of the risks posed by an intoxicated person to himself and the public, says the Appellate Division in *State v. Greeley* (11/13/03). In the absence of such a policy, so long as a defendant is informed of the right to an independent blood test, police conduct will warrant suppression of BAC test results only if that conduct affirmatively interferes with or thwarts a defendant's good-faith attempt to obtain an independent test. Translation: if you get arrested in an area where you have no family or friends to get you released while you still have a BAC to be measured, you are SOL, and we do not mean Statute of Limitations.

ruminations

Should your client take the stand? One of the crucial strategy decisions in any criminal trial. Some clients chafe at the bit waiting to tell "their story." Others are so terrified of the stand they melt into a puddle as the day of decision approaches. Understanding that the decision is the client's alone, with the attorney only offering his/her advice, some attorneys feel the need to present their client as a witness for fear that an adverse verdict will leave a fuming client who will later claim he was denied his right to "get out the truth." (One practice pointer: *voir dire* the client as to any decision about testifying, either for or against.) But listen to one recent cautionary

A Publication of the Bergen County Bar Association

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tale. In October, Frank Quattrone was accused of obstruction of justice and witness tampering in one of the highest-profile cases to go to trial following the collapse of the dot.coms. He ran the Silicon Valley office of *Credit Suisse First Boston*, and in an *Icarus*-like career had come under investigation for allowing certain clients to buy hot new stocks before they were available to general investors. His widely publicized trial ended in a hung jury. Upon being interviewed afterwards, one juror, as reported in the Oct. 25 *NY Times*, commented that as many as eight jurors had wanted to find Mr. Quattrone guilty. That juror, who supported an acquittal, said, citing Quattrone's contradictions and evasiveness, that if Quattrone had not taken the stand in his defense, he would likely have been acquitted. "I heard a lot of jurors say if he hadn't been a witness, it would have been not guilty the first day," said the juror. Moral of the story for those of us who try less celebrated cases, with somewhat less educated and sophisticated clientele: police officers are professional and experienced witnesses, and our clients are not. Our clients are scared. As well they should be, given what they have to lose, versus the...well, nothing...the state's witnesses have to lose. And when they do take the stand, does a jury shift its focus from the reasonable doubt standard to who wins the credibility war, a war most clients are ill-equipped to fight? So if you think it is best your client remain off the stand, even with the risk of having the jury believe that by his silence he is guilty (rather than opening his mouth and removing all doubt), tell your client about Frank Quattrone, and how close he came to successfully flying to the sun.

The 21st century is upon us. In the old days, people used to communicate by e-mail. Now people are too impatient to wait the 5 seconds that it takes to receive an e-mail once it is sent, and Instant Message each other. Wait, typing "Instant Message" takes too long—people "IM" each other. Your five-year old is so adept at communicating via the

internet that she is undoubtedly at least as good and probably even a better typist than you are. So, it is clear that we should be avoiding "snail mail" when it comes to things like filing appearances, motions, and other legal pleadings with the judicial system and the Prosecutor's Office. Whoa, pardner, not so fast on the draw. You can file your appearance with John Byra at Criminal Case Management by attaching the document to an e-mail addressed to john.byra@judiciary.state.nj.us, which is pretty nifty. However, there really is no provision for handling other filings that way. The Office of the Bergen County Prosecutor, led by the computer-savvy John L. Molinelli, does not yet accept filings by e-mail, although it is undoubtedly on the drawing board, or wish list. Meanwhile, you can communicate with many, Assistant Prosecutors by e-mail. Generally speaking, the e-mail address of the Assistant Prosecutors is the Assistant Prosecutor's first initial, last name @bcpo.net (i.e. jashcroft@bcpo.net). Remember two things when you send members of the Prosecutor's office e-mails: they can print them out, and they can indict. I'm just saying, that's all.

why there are criminal lawyers

Early last year, some Boeing employees on the airfield decided to steal a life raft from one of the 747s. They were successful in getting it out of the plane and home. Shortly after they took it for a leisurely drift on the river, they noticed a Coast Guard helicopter coming towards them. It turned out that the chopper was homing in on the emergency locator beacon that activated when the raft was inflated. They are no longer employed at Boeing.

A pair of Michigan robbers entered a record shop nervously waving revolvers. The first one shouted, "Nobody move!" When his partner moved, the startled first bandit shot him.

Love is all you need. The Beatles.

