
CRIMINAL LAW UPDATE

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new jersey cases

The Bill of Rights lives! In *State v. Knight* (369 N.J. Super. 424, 5/28/04), the Appellate Division actually ruled that a custodial interrogation was inherently coercive, rendering the defendant's confession inadmissible. This ruling was in stark contrast to the usual "heck, they only had electrodes hooked up to his gonads" approach to judging acceptable police conduct. Whether the confession was improperly obtained is subject to a *totality of the circumstances test*, one that is highly fact sensitive. The Court warned that "certain interrogation techniques are so inappropriate that application of the totality of the circumstances test is inadequate to assure that the resultant confession was voluntary, and the use of the technique renders the confession *per se* inadmissible." Interrogators fabricating evidence to elicit a confession, for instance, would be a *per se* due process violation. Where interrogation techniques are inherently coercive, courts will not balance the cost of suppressing evidence of guilt against the value of the ancillary rights against self-incrimination. Such a balancing approach will always make the prophylactic rights appear minimal, marginal or incremental. The touchstone of the examination: whether the interrogation exceeded the bounds of fundamental fairness. Confessions are not voluntary if derived from very substantial psychological pressures that overbear the suspect's will. Courts look at the characteristics of the defendant (young? old?

sophisticated? uneducated? Mets fan?), the length of the interrogation, the physical conditions, the techniques used, the persistence in questioning in the face of denials, and trickery in the form of false evidence or promises. When fatigue, withdrawal, hunger, thirst, or other biological needs serve as the primary incentive for a confession, coercion may be claimed, the court noted. Sometimes a 3-4 hour interrogation will not be too long; in an inherently coercive atmosphere, even a 30-minute interrogation may result in the suppression of a statement. Giving *Miranda* warnings will not necessarily protect the State, even if all the subjective indicia would make it appear that the waiver was knowing, intelligent and voluntary, if the confession was given in an atmosphere of coercion. Confessions deemed involuntary because they were obtained through compulsion or coercion are simply considered unreliable, and that is the touchstone for their inadmissibility. For fact, defendant claimed that his police interrogators promised him that so long as he just returned the money from his five bank robberies, he would get probation. Defendant seemingly found this promise credible and persuasive. He then bought a bridge from the lead investigator, and waited up all night for the Easter Bunny.

For Attorney General Guidelines on criminal statutes and procedures, go here: www.state.nj.us/lps/dcj/agguide.htm.

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The comments contained in this publication are not necessarily those of the Bergen County Bar Association; if you disagree with them, they are not even necessarily those of the author.

Discovered while perusing these guidelines one day (right, like I'm the only one who doesn't have a life) was a guideline regarding a return of weapons to police officers following the filing of a domestic violence complaint against the officer by his/her significant other. Most interesting for those who represent police officers is the fact that *even if the complaint is dismissed* the officer's weapon may be withheld, or returned only upon the fulfillment of certain conditions (marital counseling, anger management courses, psychiatric treatment or evaluation, etc.). The somewhat nebulous and somewhat questionable authority that the attorney general relies upon in exercising this power is that under New Jersey statutes all law enforcement officers are required to cooperate with the Attorney General "to secure the benefits of a uniformed and efficient enforcement of the criminal law and the administration of the criminal justice throughout the state." *N.J.S.A.52:17B-98*. Huh? How does taking the weapon of an officer whose charges have been dismissed, who is still cloaked with the presumption of innocence, promote the "efficient enforcement of the criminal law...?" It seems like a bit of overreaching, but that is the law. Or at least the law according to the attorney general.

For those of you who have not yet gotten your weekly dose of excitement, go to <http://www.lawrev.state.nj.us/index.html>, click on *Current Projects*, then *Motor Vehicles* to see the newly proposed revision to Title 39A creatively entitled *Title 39A*. The Law Revision Committee has invited comments to the code, and they should be directed to BCBA Municipal Court Committee Chairman Gerald Salerno. Very little in life is as exciting as (yawn) reading the entire motor vehicle code which at first glance stands largely unchanged except (zzzz) for renumbering of the individual sections with letters that clue you in to the particular offense. Speeding, for instance, is 39A:43-S1 (the "S" is for Speeding. Get it? And I always thought the last "S" was for savings...). Now, guess what Driving While Intoxicated is? Wrong. It is 39A:41-DUI3. *Not* 39A:41-DWI3. No, that would have been too consistent. And

Driving While Suspended, a/k/a Driving on the Revoked List? Think it is 39A:10-SUS7, or 39A:10-REV3? No, this is New Jersey, my friend. It is 39A:10-GP7. GP as in *General Prohibitions*. GF--go figure.

**Joint Meeting
Municipal Court and
Criminal Practice Committees
Monday November 8th
4:30 pm at BCBA HQ**

True story. While at the Central Municipal Court last week, a State Trooper, while discussing PBA cards, recounted an occasion where he stopped a car with three individuals in it containing heroin and syringes. Splitting them up at headquarters for questioning, one confessed the drugs were his. The trooper approached the other two and began searching their personal effects, finding in one of their wallets the suspect's version of a PBA card: a *Get Out Of Jail Free* card. Yellow. As in Monopoly®. As in *Parker Bros*. Confident the case was resolved, he looked at the young man and said "too bad you didn't show me this earlier. I would have let you go." The kid looked at him incredulously for the longest time, then said, "Really?" The trooper then said "It may be too late, but let me see what I can do." He left the room, assured himself that the other codefendant was still accepting full responsibility, came back and said "I'm keeping your card. You can never use this card again. It worked this one time, but you are now barred from using it ever again." The kid asked "are you kidding?!?" and left. *He did not pass Go and did not collect \$200.*

Future client? After scoring on a 100-yard kickoff return for a touchdown for the University of Virginia, the jubilant senior tailback told reporters, "That was just instinct. Kind of like running from the cops." Truth is, the fast ones never become clients...

