

---

---

# CRIMINAL LAW UPDATE

---

---

EDITED AND AUTHORED BY JOSEPH P. REM, JR.

ALL COMMENTS AND SUBMISSIONS, 201- 488-1234; FAX 487-8030; E-MAIL JREM@REMZELLER.COM

---

November 2005

## *new jersey cases*

What factors determine whether an accused is required to be administered the *Miranda* warnings? The key factor is whether the accused is in *custody*, not always such an easy call. Arrested and seated in the rear of a patrol car in handcuffs? Not so difficult. On-the-scene questioning is quite another matter, however, as it is often rather ambiguous. Courts must look at the time, place and duration of the detention; the physical surroundings; the nature and degree of the pressure applied to detain the individual; any and all language used by the officers; and any objective indications that the person questioned is a suspect. In a domestic violence situation, officers may question the accused briefly to dispel or confirm the allegations of the spouse or significant other without having first advised the accused of his/her constitutional rights. If the questioning is part of a police strategy to coerce an admission by suggesting that the officer had already reached a conclusion about the veracity of the allegation, that is a factor weighing in favor of finding custody. Where however, the officers use positioning or objects to only momentarily restrict the accused's movements, this amounts to nothing more than a *Terry* stop, which is a minimally intrusive curtailment of freedom of the accused's actions to secure the safety of the officers and others present. Only if the *Terry* questioning can be fairly characterized as the function equivalent of an

arrest due to its duration and the other attendant circumstances referenced above, is the issuance of *Miranda* warnings required. Remember, the purpose of *Miranda* warnings is to neutralize the pressure in custodial situations, and whether somebody is in custody is to be viewed from the *perspective of a reasonable person at the time of the questioning*, and not their fear of future custody. To be fair to prosecutors, this case does also hold as a bottom line that what is required is a "type of police-dominated, coercive atmosphere..." *State v. Smith*, 374 N.J. Super. 425 (1/27/05). Once you get in a courtroom setting, testimony about the mere presence of the friendly local constabulary in a home, or outside your vehicle, asking simple questions seems so benign, but in the middle of the night, when you are up to your...well, derriere...in buff, blue clad, crew-cut shorn pistol-toting, radio-squawking interrogators, the view--and point of view--is often quite different.

The Honorable Roy F. McGeady, Presiding Municipal Court Judge for Bergen County (Vicinage II) spoke at the Joint Municipal Court/Criminal Practice Committee meeting held on September 22<sup>nd</sup>. He has, through memos and work sessions, instructed Bergen's municipal court judges that:

- In his opinion N.J.S.A. 39:3-40(i), Driving While Suspended due to a violation of the Parking Offenses

---

## A Publication of the Bergen County Bar Association

*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.*

---

Adjudication Act requires imposition of all penalties related to a Revoked List offense, but merely limits the fine to \$100.00; it does not preclude the other penalties normally applicable to the offense. Many judges interpret the law as imposing a \$100 fine as the sole penalty. He reminds us that his opinion does not govern the conduct of his judges, and welcomes appeals on this issue so that instruction may be given by the Appellate Division;

- Citizens who issue motor vehicle complaints must not only file them within a 30-day statute of limitations, but make sure that the judge rules on the probable cause for the complaint within that time frame. Process does not issue until probable cause has been found. This is not true with police officers, who can issue summonses on their own. If your client goes down to the police station on the 29<sup>th</sup> day to file a motor vehicle complaint, it will not likely get issued until after the SOL has expired.
- In Superior Court the plea forms and judges take great care to insure that aliens are advised of the potential deportation consequences of their offense. Danger of deportation exists even in municipal court. Possession of any amount of drugs, other than less than 29 grams of marijuana, is deportable, as is any act of domestic violence, or a violation of a domestic violence restraining order. Clients need to be properly advised.
- A form has been promulgated for municipal court defendants sentenced to jail. It advises them that there are alternatives to incarceration, such as SLAP, Work Release and home custody, requires them to complete the form and, on their own to either deliver it in person to the Bergen County Jail or mail it to the Work Release Unit (thus eliminating the need for the client to personally go down to the jail, as has been the case in the past.

We have all been there, our first trials. Later when we read the transcripts of our perceived brilliant summation or piercing cross-examination, we want to crawl under the table and die. Here are some excerpts from transcripts as collected by some West Coast court reporters that show we are not alone:

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

A: Did you actually pass the bar exam?

\*\*\*\*\*

Q: The youngest son, the twenty-year-old, how old is he?

\*\*\*\*\*

Q: Were you present when your picture was taken?

\*\*\*\*\*

So the date of conception of the baby was August 8th?

A: Yes.

Q: And what were you doing at that time?

\*\*\*\*\*

Q: How was your first marriage terminated?

A: By death.

Q: And by whose death was it terminated?

\*\*\*\*\*

Q: Is your appearance here this morning pursuant to a subpoena which I sent to your attorney?

A: No, this is how I dress when I go to work.

\*\*\*\*\*

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

\*\*\*\*\*

Q: What gear were you in at the moment of impact?

A: Gucci sweats and Reeboks.

*R*igid justice is the greatest injustice.  
Dr. Thomas Fuller, English clergyman (1608-1661). *Even 400 years ago they presciently knew about NERA, the Graves Act, first and second degree crimes, school zone distributions... .*

