
CRIMINAL LAW UPDATE

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June 2006

cases

The NJ Supreme Court held recently that police need not advise those present of their *Miranda* rights when responding to the scene of a crime under the emergency aid exception to the warrant requirement, and only need to honor a request for counsel (and thus stop questioning the suspect) when the request is clearly made. In this case, the defendant called 911 from his wife's house to report her "attempted suicide." Yes, this is the same wife who had recently gotten a DV FRO against him. *Hmm*. You don't need to be Sherlock Holmes to figure this one out because...it is *elementary, my dear Watson*. When the police responded to the scene, they found the wife lying on the couch motionless with a stab wound to her chest. The defendant was on the phone with his lawyer and kept asking the police to speak with his lawyer. The initial police investigation led them to conclude that this was not so much an "attempted suicide" as an "assisted involuntary suicide." The defendant was then placed under arrest for murder and read his *Miranda* rights. The court held that his statements made prior to his arrest are admissible at trial, not protected by his equivocal invocation of right to counsel. If he had reinvoked his right to counsel after being read his *Miranda* rights, then all statements made pursuant to police interrogation from that point on would have been inadmissible. Essentially, the request for the officers to speak to his attorney was not a custodial statement and thus not subject to the *Miranda* rationale regarding coercive interrogations. *State v. Boretsky*, 186 N.J. 271 (4/5/06).

N.J.S.A. 2C:35-16 requires that "a person convicted of or adjudicated delinquent for a violation of any offense defined in this chapter or chapter 36 of this title shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years...unless the court finds compelling circumstances warranting an exception." Since clients are generally most concerned about the loss of license, it is best to be prepared to prove what is "compelling" about your client's need for a license. Remember, everybody wants the convenience afforded by driving and "needs" a license, but when does that need become *compelling*? Be prepared with documentation that your client works, and where. If your client drives his ailing mother to doctors' appointments, maybe a letter from her doctor. Drives children to school? A report card perhaps. Drives on the job? A letter from the employer addressing that issue. Traveling cocaine distributor? Err, not so much. Be creative, be complete. Remember, there are no rules of evidence at sentencing hearings, and judges will consider any reasonable documentation. Also remember that this reprieve applies *only to drug conviction suspensions*, not 39:4-49.1 CDS/MV or other Title 39 convictions.

New Jersey is now officially a two-fisted drinking state, if you think of breath testing devices as fists. And in many ways they are indeed. The Attorney General has scrapped plans to roll out the Alcotest into the remaining counties pending

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.

the outcome of *State v. Chun*, in all likelihood next Spring. Thus, Bergen, Essex, Hudson and Monmouth will remain Breathalyzer counties, while the other 17 counties are Alcotest. Important information to remember when making your machine-specific DWI discovery requests.

Effective June 19th, 2006, the Bergen County Prosecutor's Office will be providing criminal discovery via email or on a CD-ROM, for all newly indicted cases. Photocopied discovery will be available for all cases indicted prior to June 19, 2006. Attorneys are advised to contact Joan Mandle, Administrator of the Trial Section, at (201) 226-5802 or at jmandle@BCPO.net to provide her with your email address to expedite the delivery of criminal discovery.

Lunchtime Seminar
Drug Court: The Ultimate Driving Machine

Eat a sandwich and find out the answers to these questions:

- What is Drug Court?
- When is it worthwhile?
- Who is eligible?
- Who is *not*?
- What happens in Drug Court?
- How does it differ from traditional prosecutions?
- What if your client relapses?
- Does it work?

Wednesday, June 21st
12:30 pm, BCBA HQ
Call 201-488-0044
\$20, Lunch Provided

revoked list did'ja knows

- If convicted of DWI in *another* state, and then suspended in NJ through the *Interstate Compact*, any NJSA 39:3-40 conviction will *require* imposition of *enhanced penalties*, including a suspension of 1-2 years and 10 days jail.
- If that DWI-based revoked conviction occurs in a school zone, the minimum

jail term is *60 days*, even for a first offender. A second offender? *Double that bad boy*.

- A second revoked conviction carries a mandatory 1-5 day jail term. But if also convicted of a companion moving violation, the jail term is at least *10 days longer* than the last jail term. Lesson? *Plea bargain away the moving violation*. No one needs those kind of companions.
- On the revoked list for not having paid insurance surcharges? An *additional* \$3,000 penalty is imposed if the surcharges are not paid in full *by sentencing*. Judges almost always accept being current with an MVC payment plan.
- Content to amend revoked charge to subsection NJSA 3:3-40(i) for suspensions resulting from failure to pay a parking ticket? Judges are split as to whether the only penalty is a \$100 fine, or all regular penalties apply, with the fine limited to only \$100. In either event, insurance surcharges of \$750 and 9 insurance points are imposed, and it counts as a prior offense the next time the client is convicted. *Ouch*.

Judicial Retirement Dinner **Judge John A. Conte**

Wednesday, June 28th, 6:00 p.m.
Seasons Restaurant,
Washington Twp.

Reservations \$68.00.
Contact Joe Randazzo, 201-444-1060.

Summer afternoon - Summer afternoon... the two most beautiful words in the English language!
Henry James (1843 - 1916). *Slow down: the life you save may be your own. No matter how hard you work this summer, September will still be there to wreak its vengeance. Bask in the lazy, hazy, crazy days of summer, fo shizzle!*

