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State Digests

Appellate Division

STATE V. KNIGHT, A-2933-02T4, A-4099-02T4

CRIMINAL PRACTICE -- Police Interrogation -- Self-Incrimination

State v. Knight, A-2933-02T4, A-4099-02T4; Appellate Division; opinion by Parker, J.A.D.; decided and approved for publication May 28, 2004. Before Judges Pressler, Ciancia and Parker. On appeal from the Law Division, Essex County, Indictment Nos. 02-07-2656 and 01-03-1436. [Sat below: Judge Michael J. Nelson.] DDS No. 14-2-6925

Here, where defendant was arrested at 3 a.m., held incommunicado and questioned persistently until he completed his murder confession at 3:20 p.m., was inadequately clothed, given minimal food, and was seriously sleep-deprived, the interrogation was inherently coercive, his motion to suppress was erroneously denied, and his murder conviction is reversed; his robbery convictions are reversed because that interrogation was tainted by the preceding murder interrogation and continuing coercive conditions.

In January 2001, at approximately 3 a.m., Kim Smith heard a man yelling outside her Newark home. She saw defendant Shamsid Knight standing next to an SUV, yelling for her son. She called 9-1-1.

As the police officers arrived, they saw the SUV pull out of the driveway. They attempted to stop it with their lights and siren. When it did not stop, they used the microphone to tell the driver to pull over. The driver, Andrew Casimir, did as instructed. Three or four gunshots were heard coming from the passenger side. Another shot was heard as the SUV suddenly moved away from the curb, swerved down the street and struck the median. When the officers approached, they saw Casimir slumped over the steering wheel with blood coming from his head. Defendant was in the passenger seat, from which he had attempted to drive the SUV. He was ordered to drop his gun, get out of

the SUV and lie down on the ground. He was wearing only a short-sleeved T-shirt and jockstrap. He was handcuffed and escorted to a patrol car.

Approximately two hours later, Homicide Investigator Richard Gregory, of the Essex County Prosecutor's Office, and Sergeant John Melillo, of the Newark Police Department, arrived at the scene. Casimir's body was still slumped in the driver's seat. The passenger door was open and articles of blood-stained clothing were on the ground. Defendant was in the back of a patrol car still wearing only the T-shirt and jockstrap.

When defendant arrived at police headquarters, he was wearing the jockstrap, the short-sleeve T-shirt under a red plaid flannel shirt, and no shoes or socks. The clothes that had been around the SUV had been taken for DNA testing, as were the shirts he was wearing when he arrived at headquarters. He was given a hospital gown to wear and a pair of socks.

At the suppression hearing on the murder indictment, Gregory testified that defendant had been given his Miranda warnings when first taken into custody and again at headquarters when the officers began questioning him. No written waiver was signed at the time, however. Gregory questioned defendant for "hours." The first Miranda waiver was signed at 12:10 p.m. Gregory testified that the questioning was not continuous and that he gave defendant a bag of chips and a soda during the interrogation.

Defendant testified that he was removed from the SUV by police and held on the ground before he was handcuffed. The weather was very cold, and he was wearing only the jockstrap. After he was handcuffed, he was escorted to a police car. He was not given a blanket or anything to cover himself. He could not recall the last time he had eaten or slept before he was arrested.

In the interrogation room, defendant was handcuffed to a chair by one hand. He testified that "[t]here was an influx of detectives coming in and asking me questions." In response to his answers, they said, "That's not what we want to hear," and ordered him to tell them what actually happened. He said the officers said they had photographs from a surveillance camera showing him firing the gun. He claimed he was not permitted to call his grandfather; was not given anything to eat or drink; and was not permitted to use the bathroom, but was given a soda can to urinate in. He testified that he was "upset" and "scared" because he "used to see my father get beat up by police," and his "godbrother" "stopped breathing while [he was] in the custody of police."

At 12:10 p.m., defendant signed the Miranda waiver form and at 12:15 p.m., began his written statement. He said he was 23 years old and had finished his sophomore year in college. He acknowledged that the Miranda warnings were read to him verbally, that he read and signed the waiver form and that he was giving the statement of his own free will without any threats or promises. He said that the SUV was a "cab." When the police came to the Smith home and followed the SUV, the driver tried to pull over. Defendant pulled out his gun and told him to keep going. He said the driver tried to take the gun and "one (1) shot went off. Then I tried to gain control of the jeep ... and a couple of more shots came from my gun." The question and answer session resulting in defendant's written statement ended at 3:20 p.m., 12 hours after his arrest.

Defendant said that he knew Melillo from a prior incident and felt he had been threatened at that time. So, when he was presented with the waiver form and written statement, he signed them because he was afraid.

While defendant was being interrogated on the murder charge, Newark Police Detective Michael DeMaio saw his photograph on another detective's desk. He recognized it as similar to photos taken by a bank surveillance camera during one of the robberies he was investigating. He went to the room where defendant was still being detained on the murder charge, advised him of his Miranda rights and showed him the bank surveillance photograph. DeMaio testified that he asked defendant if he wanted to talk about it, defendant agreed and gave five written statements between 5 p.m. on January 24 and 12:40 a.m. on January 25. Defendant signed a Miranda waiver form before giving each statement, and signed the surveillance photos presented by DeMaio, identifying them as photos of him.

At the suppression hearing on the robbery charges, DeMaio testified that they took breaks for defendant to eat, drink, use the restroom and smoke cigarettes. During questioning, defendant was wearing the hospital gown. He was still handcuffed to a chair, but the cuffs were removed to allow him to eat and go to the restroom. DeMaio was aware defendant had been held for more than 12 hours on the murder charge when he approached him, but was unaware that he had just been interrogated for hours by another detective respecting the murder or that he had given a written statement in that case.

Defendant testified to essentially the same scenario leading up to his questioning by DeMaio as he did during the suppression hearing on the murder charge. He acknowledged admitting each robbery. When the statements were typed and brought to him for signature, however, he told DeMaio that he "was thinking twice about signing 'em [sic]." He claimed that DeMaio then promised that if he signed the statements, he would receive probation if he returned the money. Defendant denied identifying himself in the bank surveillance photos but said DeMaio told him the photos were of him and there was "[n]o reason for me lying. Make it easy on myself," so he signed the photos.

Defendant testified that he did not make the statements voluntarily. He reiterated his fear because of his godbrother's death. He acknowledged he never asked to stop the interrogation or for a lawyer or counsel, but that he asked to "have somebody come as a form of representation" and "was hoping that my grandfather could come." He said he was given a sandwich toward the end of the interrogation but that he threw it away because he did not trust the police.

Defendant acknowledged that he understood his rights and that he was familiar with the arrest and interrogation process from his two prior convictions.

Held: Two separate indictments resulted from this marathon interrogation, one charging defendant with murder and related offenses and the other with conspiracy and robbery. The murder conviction is reversed and the matter remanded for a new trial on the ground that the totality of the circumstances from the time of defendant's arrest to the conclusion of his confession were inherently coercive, rendering the confession inadmissible. The robbery convictions are reversed because the robbery interrogation was tainted by the preceding murder interrogation and

exacerbated by the continuation of the inherently coercive circumstances, and the matter remanded for trial.

As to the murder interrogation, defendant's acknowledgement that there were breaks in the questioning persuaded the judge that "the questioning wasn't so overbearing that it would break the psychological will of the defendant in this particular case." He found that defendant's statement was given voluntarily after a knowing waiver of his Miranda rights.

Defendant was convicted of murder, unlawful possession of a handgun, possession of a weapon for unlawful purpose, and eluding.

Custodial interrogations are defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." State v. Brown, 352 N.J. Super. 338, 351 (App. Div.), certif. denied, 174 N.J. 544 (2002). A confession rendered in custody must be preceded by a knowing, intelligent and voluntary waiver of Miranda rights in order to be admissible.

The voluntariness test evolved "into an inquiry that examines 'whether a defendant's will was overborne' by the circumstances surrounding the confession. The due process test takes into consideration 'the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation."' Dickerson v. U.S., 530 U.S. 428, 434 (2000).

The "totality of the circumstances" test is highly fact-sensitive. State v. Pickles, 46 N.J. 542, 576 (1966), held that "the competency of a confession not only depends upon compliance with the ordinary rules of evidence, but also upon the deeper requirement of fundamental fairness in the due process sense of the Fourteenth Amendment."

"Certain **interrogation techniques** are so inappropriate that application of a 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." State v. Patton, 362 N.J. Super. 16, 45 (App. Div.), certif. denied, 178 N.J. 35 (2003). Where **interrogation techniques** are inherently coercive, the court 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." Ibid.

Other courts have adopted the per se rule when the parameters of interrogation have exceeded the bounds of fundamental fairness rendering the interrogation inherently coercive and defendant's statements inadmissible per se.

"The inherently coercive nature of incommunicado interrogations argues in favor of a clear principle to safeguard the presumption against the waiver of constitutional rights." State v. Reed, 133 N.J. 237, 265 (1993).

"Confessions are not voluntary if derived from 'very substantial' psychological pressures that overbear the suspect's will." State v. Cook, -- N.J. -- (2004) (slip op. at 14). To determine whether the totality of the circumstances are so egregious that an interrogation is inherently coercive rendering the confession inadmissible per se, a number of factors must be considered, including, but not limited to: (1) the length of interrogation time; (2) the physical conditions; (3) the techniques used; (4) the persistence in questioning in the face of denials; or (5) presentation of false evidence or promises.

In considering defendant's statement respecting the murder charge, the trial judge's conclusion is disagreed with. Defendant was taken into custody shortly after 3 a.m. on January 24. He remained with no additional clothing or covering for at least two hours. At police headquarters, he was questioned intermittently by several different officers, none of whom took notes or recorded the interview until 12:10 p.m., when he first signed a waiver form. He began his statement at 12:15 p.m. and concluded it at 3:20 p.m. He was given a can of soda and a bag of chips during the 12 hours he was in custody before concluding his statement on the murder charge. Although the interrogation was not continuous, he was held incommunicado during the entire time and was not given any opportunity to rest. Since he was taken into custody shortly after 3 a.m. and the evidence indicated he had spent the earlier hours that night in New York and Jersey City, it is obvious that by the time he concluded his statement, he was seriously sleep-deprived. The totality of these circumstances rendered the interrogation inherently coercive.

The length of the interrogation alone exceeded the bounds of due process. Gregory acknowledged that he questioned defendant for "hours" before and after the written waiver was signed. While there is no hard-and-fast rule delineating when the length of an interrogation becomes coercive, "[w]hen fatigue, withdrawal, hunger, thirst, or a craving for other biological needs serve as the primary incentive for a confession, duress may be claimed." Fred E. Inbau, et al, Criminal Interrogation & Confessions, 422 (4th ed. 2001).

Defendant acknowledged that he removed his clothes and threw them out the window because he was going to tell the police he was being robbed. Nevertheless, holding him in a patrol car on a cold January night for at least two hours while wearing only a jockstrap and T-shirt was coercive. Moreover, Gregory acknowledged that defendant initially denied the accusations but he persisted in questioning defendant because, in his experience, suspects do not tell the truth initially.

Supplying defendant with a hospital gown at police headquarters was problematical by itself and when considered in conjunction with the length of time he was held incommunicado, the minimal amount of food he was given, the deprivation of sleep, and the persistent questioning in the face of denials, the totality of the circumstances rendered this interrogation inherently coercive. Defendant's motion to suppress was erroneously denied and his confession was improperly admitted. The convictions on Indictment 01-3-1436 are reversed and the matter is remanded for a new trial.

The statements respecting the five robbery counts charged in Indictment 02-07- 2656 were made after the murder statements, beginning more than 13 hours after defendant was taken into custody and continuing for more than 20 hours after his arrest. During this time, he was inadequately clothed, held incommunicado, given minimal food, and was even more seriously sleep-deprived than during the murder interrogation. He signed the first waiver forms at 4:37 p.m. and

the statements were completed at 6:15 p.m., 6:45 p.m., 10:20 p.m., 11:20 p.m., and 12:40 a.m. on January 25, respectively.

The trial judge found defendant's testimony lacking in credibility and discredited his claim that his godbrother had died in police custody. He found that the state met its burden in proving beyond a reasonable doubt the voluntariness of the incriminating statements and the evidence met the criteria in State v. Galloway, 133 N.J. 631, 654 (1993), in that defendant was 23 years old, had at least one year of college and understood his rights from prior involvement with the law. He concluded that the length of detention, together with the prolonged and repeated nature of the questioning, was not mentally exhausting or coercive.

Following denial of defendant's motion to suppress, he pleaded guilty to conspiracy to commit robbery and robbery.

The trial judge's conclusion that defendant's age, education and familiarity with the criminal process was sufficient to render his waiver of rights and statements voluntary under the totality of circumstances is rejected. "Confessions obtained through undue compulsion or coercion are considered involuntary and, therefore, unreliable. We exclude from evidence such confessions, not only because we view an involuntary confession as intrinsically unreliable, 'but also because its admission would offend the community's sense of decency and fairness."' Cook, slip op. at 13.

Even accepting DeMaio's testimony that he gave defendant breaks to eat, use the restroom and smoke, the length of interrogation on the robbery charges after the interrogation on the murder charge, the continuing deprivation of sleep, and inadequate food and clothing, created such an inherently coercive atmosphere as to render the five statements involuntary.

Defendant's motion to suppress was erroneously denied. The convictions on Indictment 01-06-2436 are reversed. The matter is remanded for defendant to withdraw his plea and proceed to trial.

Digested by Judith Nallin

For appellant in both appeals -- Yvonne Smith Segars, Public Defender (Michael C. Kazer, designated counsel, on the brief). For respondent in A-2933-02T4 -- Peter C. Harvey, Attorney General (Maura K. Tully, Deputy Attorney General, on the brief). For respondent in A-4099-02T4 -- Paul T. Dow, Acting Essex County Prosecutor (Gary A. Thomas, Special Deputy Attorney General, on the brief). Appellant submitted a supplemental pro se brief.

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Metropolitan Corporate Counsel

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Corporate Counsel Organization Highlights

# GUIDING THE NEW YORK COUNTY LAWYERS' ASSOCIATION INTO THE FUTURE: NORMAN L. REIMER ASSUMES THE HELM

The Editor interviews Norman L. Reimer, President, New York County Lawyers' Association, and Partner, Gould Fishbein Reimer & Gottfried, LLP.

Editor: Tell us how you came to be President of the Association.

Reimer: I've always wanted to be a criminal defense lawyer. My first job in 1977 was with one of the finest criminal defense lawyers in the City, and I've worked with him ever since. During this period, the firm has grown and developed practices in other areas. I joined the Association in 1977 right out of law school because I wanted access to its fine library. I became active in its Criminal Justice Section and then got involved in other projects, including, at the request of the Association's leadership, serving on the Membership Committee and the Executive Committee.

Editor: What initiatives do you to plan to promote as President that grew out of your work with the Criminal Justice Section?

Reimer: The Association has an incredible history of involvement in access-to- justice issues. We were involved early in the 20th century in trying to secure counsel for people accused of crimes - long before the Supreme Court decided there was a constitutional right to counsel. As far back as the early '60s, the Association proposed a plan for providing representation to people accused of felonies and misdemeanors in New York City through use of assigned counsel.

In the mid '90s the indigent defense system in the City and State was in crisis. I proposed to then President of the Association Cas Patrick that we create an Indigent Defense Task Force, which he asked me to chair.

Editor: What were some of the accomplishments of the Association's Indigent Defense Task Force?

Reimer: The Task Force systematically examined the entire program by which indigent people were being provided with counsel in criminal cases. It is a two-part program in New York, involving both institutional providers and assigned counsel

The first part of our study was concerned with institutional providers. At that time, Mayor Rudy Giuliani and the Legal Aid Society were at odds over labor issues. The Giuliani administration reacted by deciding to put some work out to bid from new providers. After a meticulous study, the Task Force concluded that to do that without having practice standards could be a recipe for disaster. There is something fundamentally inconsistent between the provision of effective legal counsel to the poor and the economic interest of a governmental entity that seeks to buy legal services as inexpensively as possible.

Fearing a catastrophe, our Task Force, working with the City Bar and other bar associations, prepared a proposal for creating a new entity to develop minimum practice standards for institutional providers supplying representation to indigent people accused of crimes. We brought our proposal to the attention of the Appellate Division, which has a major role in overseeing indigent defense. It ultimately agreed to establish something called the Indigent Defense Organization Oversight Committee, whose mission is to provide standards and require proper training for institutional providers.

Editor: How did your Task Force address issues relating to assigned counsel?

Reimer: Assigned counsel are private counsel screened by a committee of the Appellate Division, which I chaired for a number of years. They are compensated at a rate fixed by State statute. At the time I chaired the Screening Committee, it was painfully evident that we could not find enough qualified counsel willing to work at the rates in effect since 1984 - $40 for in-court work and $25 for out-of-court work. At the time, there were terrific lawyers who enjoyed handling a few of these cases each year, but simply could not afford more because they lost money on them.

After careful study, the Association's Indigent Defense Task Force proposed a sweeping rate change. We took our proposal to the State Bar, which unanimously endorsed it. But we were unable to persuade government officials that the hourly rates should be increased.

By the end of 1999, we were completely frustrated by the growing crisis, not only in criminal cases, but also in Family Court, where lawyers are also compensated under the same assigned counsel plan. You had abused women who were going without counsel, and you had children who

needed counsel in child protection and child delinquency proceedings. After long deliberation, we decided, as a bar association, to bring a lawsuit to challenge the rate structure.

It was a precedent-setting piece of litigation because we were not suing on behalf of the lawyers; rather, we were suing on behalf of the indigent litigants who were inadequately represented. We came up with a theory of third- party standing to assert the rights of individuals who would otherwise never be able to make this claim.

We brought what we called a systemic challenge, alleging that the failure to change the rates had so thoroughly degraded the system that competent counsel could not be provided and constitutional deprivations were happening daily. We could not have brought the suit had we not been successful in recruiting Davis Polk and Wardwell, one of the City's outstanding firms, to take the case on a pro bono basis.

The litigation was a huge success, not only because it resulted in raising the hourly rates to a more realistic level, but also because the Association prevailed on the theory that it could assert the rights of poor people in litigation to challenge the constitutionality of State statutes. That decision was unanimously affirmed by the Appellate Division. Finally the State Legislature acted and raised the hourly rate across the board to $75.

Editor: I understand that you are a great supporter of the Association's Justice Center. What are some of its future plans?

Reimer: Coinciding with the 30th anniversary of the Housing Court, our Justice Center is convening a conference to which we are inviting people and organizations with an interest in housing. Statistics show that 90-95% of all tenants are unrepresented while landlords consistently do have counsel. The goal of this conference is to develop recommendations to improve the Housing Court.

I am also going to be setting up a task force to improve the quality of the Criminal Courts and to make them more user friendly. The Housing and Criminal Courts are extremely important because they are so heavily used.

Editor: I understand that the Association will soon be offering its members a completely new Tech Center.

Reimer: Yes, within a few weeks, we will be unveiling in a test mode, a state- of-the-art Tech Center, with a formal opening in the fall. The Tech Center will give our members online access, enabling them to be in touch with their offices and the court system, as well as conduct research. We are also exploring the possibility of installing a "WiFi" wireless network.

Editor: How does the Association plan to ready itself for the anticipated business expansion downtown?

Reimer: We are at the perimeter of the Trade Center site and also in the heart of the financial community. In my acceptance remarks on May 27th, I announced a very important initiative - a proposal to create a Business Law Center that can focus on commercial issues. Center members from academia, the bench and the bar will design a series of programs to study the jurisprudence of business law and to comment on cutting-edge issues of special interest to the corporate community.

Editor: I understand that one of the great advantages of the Association's committees is that they provide members with insights into the thinking of the judiciary.

Reimer: That is correct. One of the great values of our Association is that it brings lawyers from all practice areas into a collegial environment. It is wonderful to be able to connect with your adversaries in a nonadversarial way. By the same token, the ability to interact with judges outside the courtroom is an invaluable benefit both for practicing lawyers and for judges, who can learn first hand about the concerns of the lawyers who practice before them. We sponsor an annual summer program called Lunch With a Judge for associates at the big firms. We also launched a new program on the criminal side where we have Lunch With a Judge in the judge's chambers so that prosecutors and defense attorneys can sit and talk about the practice of law with judges in an informal environment.

Editor: Let me ask you about the Association's proposal that interrogations be videotaped.

Reimer: This is another exciting innovation proposed by the New York County Lawyers' Association, which I hope will eventually have a major effect on our criminal justice system. Our Civil Rights Committee developed a proposal to require that all custodial interrogations be videotaped. Typically in this country, a recording will be made at the end of interrogations when people say what their interrogators want them to say. However, we have no record of what went on up to that point. There have been startling revelations around the country of people convicted on the strength of **false confessions** . A good example is the 1989 case involving the Central Park jogger, where the convictions were recently overturned. Recording interrogations will also protect the police as the recordings will serve as irrefutable documents.

Editor: What does the Association offer corporate counsel?

Reimer: NYCLA is vitally involved with issues relevant to corporate counsel. When Sarbanes-Oxley came along, NYCLA was the first bar association in the country to get comments posted on the SEC's website. We are an open bar association where people can join any committee. At NYCLA, corporate counsel have the opportunity not only to interact on our committees with other lawyers interested in business law, but also to participate in drafting reports and position papers that are likely to have an impact on public policy.

Editor: What about diversity?

Reimer: Our Diversity Task Force developed a statement asking law firms and corporate law departments to pledge to do a better job with diversity, including providing clients with

information about how much of their work was done by minority lawyers. Fifty-four bar associations and 27 major law firms have already signed the statement.

The new slate of officers elected by members of the Association at its annual meeting on May 27th included a majority of women for the first time in our history. Our leadership ladder includes Catherine Christian, our new Vice President, who is in line to become the first African-American and the second woman to serve as President of the Association.

Editor: How does the Association attract younger lawyers?

Reimer: We have a number of law school initiatives to stimulate their interest. There is nothing better than meeting people in practice when you are thinking about getting your first job. Hopefully, providing an early introduction will stimulate long-term interest in the Association. Additionally, our Young Lawyers Section offers networking opportunities and a full range of programs designed to enhance career options.

Editor: What do you want to accomplish by the end of your term?

Reimer: Without sounding falsely modest, my primary goal is to leave NYCLA in as good shape as I found it when I became President. Beyond that I want to launch our strategic plan, hold successful events for our 100th anniversary, make substantial progress in building our endowment, and get our Business Law Center off to a running start. Lower Manhattan is in the process of undergoing a dramatic resurgence. I want the Association to play an important role in that revitalization.

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