



STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

TO: Joint Legislative Justice Oversight Committee
FROM: Evan Meenan, Deputy States Attorney
RE: S.250, Sec. 4 – Study of Law Enforcement Interview Tactics
DATE: June 7, 2021
CC: John Campbell, Executive Director
Bill Sorrell, Vermont Criminal Justice Training Council
Heather Simons, Vermont Criminal Justice Training Council

Introduction

Section 4 of S.250 directs this Committee to study the tactics Vermont law enforcement uses during witness and suspect interviews. This memo outlines the legal standard the Vermont Supreme Court has established to determine whether a suspect's statement to law enforcement was involuntary and therefore inadmissible. The Department defers to law enforcement regarding specific tactics it currently employs.

Discussion

A conviction obtained through a suspect's involuntary statement violates due process and is inadmissible. *State v. Zehner*, 142 Vt. 251 (1982). When a defendant claims statements were involuntary, "the prosecution must prove by a preponderance of the evidence that the statements were voluntary." *State v. Lambert*, 2021 VT 23 and *State v. Reynolds*, 2016 VT 43.

A statement is voluntary if it was "the product of a rational intellect and the unfettered exercise of free will." *State v. Zehner*, 142 Vt. 251 (1982), *State v. Reynolds*, 2016 VT 43, and *State v. Lambert*, 2021 VT 23. "Statements are voluntary so long as they reflect a product of the suspect's own balancing of competing considerations." *In re Brooks*, 2018 WL 3022683 (Vt. June, 15, 2018) and *State v. Reynolds*, 2016 VT 43.

A statement is involuntary "if coercive governmental conduct played a significant role in inducing the statement." *State v. Reynolds*, 2016 VT 43. This occurs when the tactics used to elicit the statement overbore the suspect's will and critically impaired the suspect's capacity for self-determination. *State v. Zehner*, 142 Vt. 251 (1982) and *State v. Kolts*, 2018 VT 131. This analysis is made without regard to the "truth or falsity" of the defendant's statement: "Whether true or false, a confession given involuntarily is inadmissible in a criminal trial." *State v. Reynolds*, 2016 VT 43 and *State v. Zehner*, 142 Vt. 251 (1982). In other words, just because a suspect's statement later turns out to be false, does not mean it was made involuntarily. For example, a guilty suspect may knowingly and voluntarily provide the police with false information to try to avoid criminal liability.

Determining whether a statement was voluntary requires courts to consider “the totality of the circumstances.” *State v. Zehner*, 142 Vt. 251 (1982), *State v. Reynolds*, 2016 VT 43, and *State v. Kolts*, 2018 VT 131. Some relevant factors include “the youth of the accused, his level of education, his level of intelligence, the extent the accused was advised of his constitutional rights, the length of the detention, the repeated and prolonged nature of the questioning, and the use of physical punishment, such as the deprivation of food or sleep.” *State v. Lambert*, 2021 VT 23.

Examples of improper police tactics include “threats, improper influence, or physical or psychological pressure.” *State v. Zehner*, 142 Vt. 251 (1982) and *State v. Lambert*, 2021 VT 23. Providing a suspect with false information absent additional coercion may, but is not always sufficient to overcome a suspect’s will and render the suspect’s statements involuntary: “[L]ies about incriminating evidence, taken alone, are not enough to make any resulting confession involuntary.” *State v. Lambert*, 2021 VT 23. The Vermont Supreme Court has explained this is because a suspect who knows they are innocent will react differently to false statements about evidence than to threats or promises:

“And, as courts have reasoned, an interviewer’s use of false evidence is less likely to produce an involuntary confession than an interviewer’s lie about matters external to the charge. For example, lies threatening a suspect’s ability to retain custody of a child render a confession involuntary because they could induce a confession by overcoming a suspect’s will. But lies about evidence of the charge are more likely to evoke, if any feelings at all, a suspect’s belief about his or her own culpability.”

State v. Kolts, 2018 VT 131. Importantly, during some investigations, law enforcement must provide suspects with false information. For example, during an undercover child luring case, an officer purporting to be a child must provide a suspect with false information about the officer’s identity.