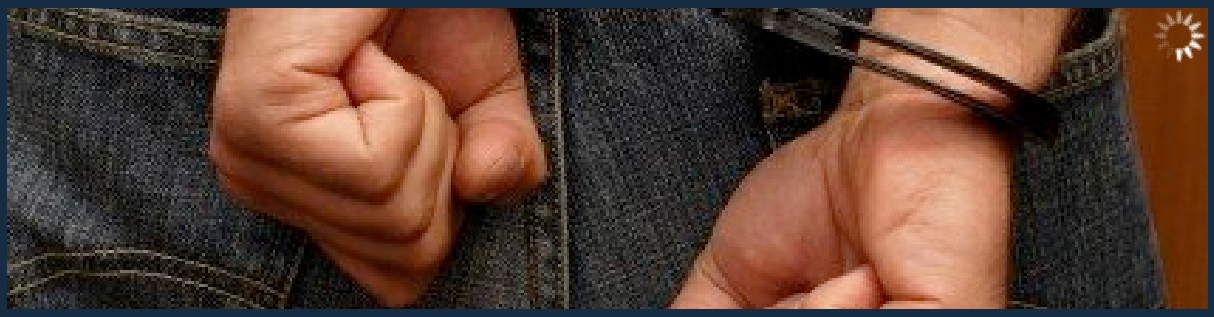
Kevin Hagan's DUI, Criminal Defense, and Family Law Blog - Serving RI and MA

I'm Kevin O. Hagan, Esq., and I created this blog to discuss current legal issues with the public related to DUI Law, Criminal Defense, Family Law & more. As a former RI Prosecutor of 6 years, I prosecuted hundreds of major crimes including child abuse, homicide, robbery and white collar crime. I've defended clients charged with all forms of capital offenses, major felonies and misdemeanors and successfully litigated family law, personal injury, & DUI cases of every kind.



SUNDAY, JANUARY 10, 2010

"A trial on a charge of driving while intoxicated may raise constitutional issues"

A trial on a charge of driving while intoxicated may raise constitutional issues, such as whether there was probable cause for the arrest, whether adequate warnings were given to the suspect as to his rights, whether there was an intelligent waiver of rights, whether there was duress sufficient to raise a defense of self-incrimination, and whether there might have been a violation of equal protection and due process guarantees. The various constitutional questions noted above are necessarily left largely unanswered, because few of such questions have been satisfactorily answered by the courts in the context of prosecutions for driving while intoxicated. Decisions of the United States Supreme Court on these constitutional issues have been rendered in cases involving felonies such as murder, burglary, theft, and possession of narcotics, but the application of such decisions to driving-while-intoxicated cases are not always clear in most instances.

At the present time, United States Supreme Court decisions do not support a contention that requiring an accused to submit to chemical intoxication tests violates his fifth amendment privilege against self-incrimination. In considering the constitutionality of a state's implied consent statute, counsel should carefully note the impact of several United States Supreme Court decisions. In a leading case, Rochin v. California, 342 US 165, 96 L Ed 183, 72 S Ct 205, 25 ALR2d 1396, decided in 1952, police conduct in having an accused's stomach pumped to determine if he had swallowed narcotics was held to be so objectionable that a subsequent confession

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About Me

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Following 1 year as a Rhode Island Superior Court Law Clerk and 6 years as Special Assistant Attorney General in Rhode Island, I joined the law firm of Houlihan, Managhan & Kyle. My firm handles a variety of cases in

was inadmissible as coerced. However, in another, later case, Breithaupt v. Abram, 352 US 432, 1 L Ed 2d 448, 77 S Ct 408, decided in 1957, results of analysis of a blood sample taken by a physician while the subject was unconscious was held to be admissible as not violating the defendant's rights. In the famous Miranda decision, Miranda v. Arizona, 384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974, the Supreme Court in 1966 held that, in order to render a confession admissible, warnings must be given prior to in-custody interrogation of individuals suspected of commission of a felony. In Schmerber, Schmerber v. California, 384 US 757, 16 L Ed 2d 908, 86 S Ct 1826, decided later in the same term of court, results of an analysis of a blood sample taken at a hospital while the suspect was conscious was held to be admissible in evidence as not violating due process or other constitutional safeguards.

Thus, the defense attorney should be prepared to raise all possible constitutional objections under both the federal and state constitutions. Defendants often have a double chance for acquittal on constitutional grounds—one under the federal and one under the state constitution. The state court may be more solicitous of a suspect's rights under state constitutional provisions than was the United States Supreme Court in Schmerber v. California. Of course, this is not generally the case.

In one State circumstance, two South Dakota police officers stopped the defendant's car after they saw him fail to stop at the stop sign. The defendant failed field sobriety tests and he was placed under arrest and read his Miranda rights. The defendant then refused to submit to a blood-alcohol test, saying that he was too drunk to pass it. South Dakota law specifically declares that refusal to submit to a blood-alcohol test "may be admissible into evidence at the trial". Nevertheless, the defendant sought to suppress all evidence of his refusal to take the test. A South Dakota Circuit Court granted the suppression motion, holding among other things, that allowing evidence of refusal violated the defendant's federal constitutional rights. On appeal, the South Dakota Supreme Court affirmed the suppression of the act of refusal on the grounds that the state statute, which allowed the introduction of this evidence, violated the federal and state privilege against self-incrimination. On certiorari, the United States Supreme Court reversed and remanded. In South Dakota v. Mellive (1983, US) 74 L Ed 2d 748, 103 S Ct 916, it was held that the admission into evidence of defendant's refusal to submit to the blood-alcohol test did not offend the Fifth Amendment right against self-incrimination since the refusal to take such a test, after a police officer had lawfully requested it, was not an act coerced by the officer and since the offer of taking the test was clearly legitimate and became no less legitimate when the state offered the second option of refusing the test, with the attendant penalties for making that choice.

the areas of criminal defense, white collar crime, business litigation, civil litigation, government investigations, serious personal injury cases, real estate and family law. Since 2002, I've successfully handled all kinds of criminal cases in Massachusetts and Rhode Island. I have achieved both acquittals at trial and favorable resolutions for my clients at both the trial and investigative stages of a case. I have defended clients charged with all forms of capital offenses, major felonies and misdemeanors. As a prosecutor, I prosecuted hundreds of major crimes including child abuse, homicide, robbery and white collar crime.

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Posted by Kevin O. Hagan, Esq. at 4:26 PM 0 comments
Labels: B.A.C., Constitutional Law, Criminal Defense, DUI, Miranda, Supreme Court cases

MONDAY, JANUARY 4, 2010

"Not only are driving under the influence arrests more plentiful, they are becoming more difficult to effectively defend."

Not only are driving under the influence arrests more plentiful, they are becoming more difficult to effectively defend. Within the last few years, many of the once famous "loopholes" have been tightened in an effort to successfully prosecute DUI suspects. Rhode Island's Pimental case stands for the proposition that sobriety checkpoints are violative of the Rhode Island Constitution; however, even well established case law such as this will likely change in the years to come. With a legislature that is more and more educated about drunk driving statistics and a Supreme Court that is generally more conservative in composition than those of the past, DUI laws will inevitably evolve to obviate legal arguments that once existed. As this happens, Rhode Island Criminal Defense Lawyers will need to become more vigilant about analyzing current laws, regulations and cases that impact the legal and constitutional rights of their clients.

Check out this great article on projo.com:
Drunken driving accidents, arrests plentiful in R.I.
http://www.projo.com/news/content/2009_drunken_driving_12-29-09_09GSOV7_v48.3cf7196.html

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