

STATE V. PATTON

(decided July 7, 2003)

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I. INTRODUCTION

Courts have struggled to define appropriate limits on police interrogations of suspected criminals. Although case law clearly prohibits admissions of confessions obtained by interrogation techniques that overbear the will of the accused, courts disagree about the admissibility of confessions obtained by deception or trickery. In *State v. Patton*,¹ the Appellate Division of the Superior Court of New Jersey held that inducing a confession with tangible police-fabricated evidence is a *per se* violation of due process.² This Case Comment will argue that the adoption of a *per se* rule was inappropriate. Instead, the court should have distinguished between so-called “extrinsic” and “intrinsic” falsehoods. An extrinsic falsehood is one outside the scope of the crime, such as a false promise of release rather than incarceration or a false threat to take the accused’s children away.³ An intrinsic falsehood, by contrast, is one that concerns evidence in the present case, such as a misrepresentation concerning incriminating evidence.⁴ Confessions induced by extrinsic falsehoods should be inadmissible *per se*, while confessions induced by intrinsic falsehoods should be evaluated under a “totality of the circumstances” test to determine whether the confession was voluntary.⁵

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1. 826 A.2d 783 (N.J. Super. Ct. App. Div. 2003).

2. *Id.* at 805.

3. *State v. Kelekolio*, 849 P.2d 58, 73 (Haw. 1993).

4. *Id.*

5. *Sheriff, Washoe County v. Bessey*, 914 P.2d 618, 619 (Nev. 1996).

II. THE PATTON CASE

A. *Facts*

Ronald Patton was arrested for the murder of Gloria Hoke and detained for nineteen hours.⁶ During this time, the police created an audiotape depicting a fictitious eyewitness to the crime, hoping it would induce Patton to confess.⁷ The audiotape described the location of the murder, the suspect, the victim, the relationship between the suspect and the victim, and the circumstances of the murder.⁸ The fictitious eyewitness implicated Patton in the crime.⁹

When the interrogation began, Patton signed a Miranda card waiving his Fifth Amendment rights.¹⁰ The police then questioned him about the night of the murder.¹¹ When Patton was unresponsive, the police informed him that they had interviewed an anonymous eyewitness to the crime and then played the fabricated audiotape.¹² The tape was not a recording of an actual eyewitness interview, as Patton had been told, but was, instead, a recording of a police officer pretending to be an eyewitness.¹³ The officer used information gathered in a police investigation to make the recording appear as though it were a real interview.¹⁴ Patton confessed immediately after hearing the audiotape.¹⁵ The entire interrogation process, including the confession, lasted less than one hour.¹⁶

B. *Lower Court Decision*

In a pre-trial motion the defendant sought to suppress his confession by challenging the use of the fabricated audiotape.¹⁷ The judge denied the motion, reasoning that obtaining confessions

6. *Patton*, 826 A.2d at 785.

7. *Id.*

8. *Id.* at 785-90.

9. *Id.*

10. *Id.* at 785.

11. *Id.*

12. *Patton*, 826 A.2d at 785.

13. *Id.*

14. *Id.*

15. *Id.* at 789.

16. *Id.*

17. *Id.* The defendant also argued that "after his arrest and at the time of his statement, he was suffering from the effects of heroin withdrawal, and his statement was 'coerced.'"

from criminal suspects serves a “useful social purpose,” and that because most criminals do not confess without sway, trickery may be used to persuade them to do so.¹⁸ The judge reasoned that sophisticated interrogation techniques involving insincerity and potential deceit do not “remove a suspect’s free will” and thus, would not elicit a confession from an innocent suspect.¹⁹ As a result, the prosecution was permitted to admit the tape into evidence in order to demonstrate the voluntariness of Patton’s confession.²⁰ Subsequently, he was convicted of the murder.²¹

C. Appellate Opinion

Patton sought review in the appellate division, claiming a due process violation because his confession was coerced by the fabricated audiotape.²² The issue on appeal was whether using police-fabricated evidence to obtain a confession is a *per se* violation of due process, or merely one factor to consider among others.²³ The court concluded that using police-fabricated evidence to coerce a confession is *per se* a violation.²⁴

In reaching this conclusion, the court distinguished other cases that upheld confessions induced by police misrepresentations.²⁵ After reviewing cases applying a *per se* rule and cases apply-

18. *Patton*, 826 A.2d at 785.

19. *Id.* at 790.

20. *Id.* This resulted in an evidentiary problem, leading to defendant’s move for a mistrial after the tape was played. The contents of the tape included information about “incidents of domestic violence and ‘other bad acts’ committed by the defendant,” which are considered inadmissible under evidentiary rules prohibiting hearsay and prohibiting use of bad acts to show bad general character. The motion for a mistrial was denied, but the trial judge gave the jury a limiting instruction directing them to consider the information that the tape provided, not “for the truth of the statement or as proof that the defendant committed a violent act or is a bad person, [but] only as it relates to the effect that the statement may have had upon the state of mind of the defendant.”

21. *Id.*

22. *Id.*

23. *Id.* at 791. The appellate division also addressed a secondary issue; whether the police have the authority to stop, search and arrest a defendant after the receipt of an anonymous tip. The court remanded this issue to the trial court, requiring a detailed review of the information transmitted to the police. *See Patton*, 826 A.2d at 805-07.

24. *Patton*, 826 A.2d at 805.

25. *Id.* at 793-94 (focusing specifically on Supreme Court and other Federal and State Court interrogation cases).

ing an “extrinsic/intrinsic” test, the court explained why it chose to adopt a *per se* rule.²⁶ The court buttressed its decision by analogizing *Patton* to other New Jersey cases requiring a *per se* exclusion of a confession.²⁷

The court began by reviewing United States Supreme Court cases. The Supreme Court has decided many cases involving interrogation tactics and has found certain techniques permissible, and others not. The Court prohibits admission of confessions obtained by physical abuse.²⁸ In *Brown v. Mississippi*, the defendants were whipped and beaten until they confessed.²⁹ The Court held that using physical abuse to obtain a confession is unconstitutional.³⁰ These interrogation methods were “revolting to the sense of justice,” and using the confessions they induced to prosecute defendants was a clear violation of due process.³¹

With respect to interrogations involving police misrepresentations, *Patton* explained, the Supreme Court has taken a “totality of the circumstances” approach.³² This approach requires a court to balance the suspect’s characteristics, including age, intelligence, education, and prior encounters with the law, as well as the conditions under which the questioning took place, and determine whether the combined facts were likely to result in a voluntary confession.³³ Using this approach, the Supreme Court has upheld the admission of some confessions induced by trickery or deceit and held others inadmissible. For example, in *Frazier v. Cupp*,³⁴ the Supreme Court held a confession voluntary even though police lied in telling the defendant that his co-defendant had implicated him in the crime.³⁵ Similarly, in *Miller v. Fenton*,³⁶ the Court upheld a confession obtained after the police lied about evidence they had against the defendant and told him that he was not a criminal and should receive

26. *Id.* at 794-98.

27. *Id.* at 801-03.

28. *Brown v. Mississippi*, 297 U.S. 278, 286 (1936).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Patton*, 826 A.2d at 800.

33. *Id.*

34. 294 U.S. 731 (1969).

35. *Id.*

36. 474 U.S. 104 (1985).

psychiatric help.³⁷ On the other hand, the Supreme Court has condemned falsehoods that involve unfair psychological coercion. For example, in *Lynumn v. Illinois*,³⁸ the Court invalidated a confession obtained by threatening to take the defendant's children away and terminate her welfare benefits.³⁹ Similarly, in *Spano v. New York*,⁴⁰ the Court threw out a confession where a police officer, the defendant's childhood friend, told the defendant that his job and family would be in jeopardy unless the defendant confessed.⁴¹

Patton also reviewed other state and federal court decisions that used the totality of the circumstances test to determine the admissibility of confessions obtained through trickery or deceit.⁴² Ultimately, however, *Patton* distinguished those cases on the ground that they involved merely verbal misrepresentations, as opposed to misrepresentations employing tangible police-fabricated evidence.⁴³

The court then proceeded to address decisions from other jurisdictions that involved tangible evidence.⁴⁴ Based on the court's evaluation, it is evident that two different approaches have been applied. Courts have either *per se* rejected the use of tangible, fabricated evidence to obtain a confession under all circumstances, or they have used the extrinsic/intrinsic test, rejecting confessions induced by extrinsic falsehoods while admitting confessions induced by intrinsic untruths.⁴⁵ *Patton* juxtaposed *State v. Cayward*,

37. *Id.*

38. 372 U.S. 528 (1963).

39. *Id.*

40. 360 U.S. 315 (1959).

41. *Id.*

42. *Patton*, 826 A.2d at 793-94.

43. *Id.* at 794.

44. *Id.*

45. See *State v. Farley*, 452 S.E.2d 50 (W. Va. 1994) (warning by court that if the defendant had been shown a document indicating that he failed a polygraph test his confession would not be upheld), *State v. Kelekolio*, 849 P.2d 58 (Haw. 1993) (setting out the extrinsic/intrinsic approach and stating that deliberate falsehoods intrinsic to the facts of the alleged offence in question will be treated as one of a totality of the circumstances surrounding the confession or statement to be considered in assessing its voluntariness), *Arthur v. Commonwealth*, 480 S.E.2d 749 (Va. 1997) (holding that a confession resulting from police showing defendant "dummy" reports indicating that defendant's fingerprints and hair were found at the crime scene was voluntary), *State v. Whittington*, 809 A.2d 721 (Md. Ct. Spec. App. 2002) (upholding confession where police placed an invisible powder on a pen they gave to defendant to use so that when

which applied a *per se* rule, and *Sheriff, Washoe County v. Bessey*, which applied the extrinsic/intrinsic test.

In *State v. Cayward*,⁴⁶ the police fabricated two scientific reports on official-looking stationary stating that the defendant's semen stains were found on the victim's underwear.⁴⁷ After viewing these reports the defendant continued to deny his guilt.⁴⁸ However, when police mentioned that this evidence would be used to seek the death penalty against him, the defendant confessed.⁴⁹ The court determined that confessions obtained by the use of fabricated documents "overstepped the line of permissible deception," and were therefore *per se* inadmissible.⁵⁰ *Cayward* reasoned that official-looking documents give a "more permanent and facially reliable impression than a simple verbal statement."⁵¹ The court stated that creating a false document "offends our traditional notions of due process" because people do not expect police to go to such lengths to obtain confessions.⁵² Additionally, the court feared that fabricated reports would be used as evidence in court, thus preventing a defendant from having a fair trial.⁵³ The court concluded that police-fabricated evidence has "no place in our criminal justice system" and that a confession obtained by using such "evidence" is inadmissible *per se*.⁵⁴

they later conducted a fake gun "blow back" test, it appeared to her that she still had gun powder in her hand).

46. 552 So. 2d. 971 (Fla. Dist. Ct. App. 1989).

47. *Id.* at 972.

48. *Id.*

49. *Id.*

50. *Id.* at 973.

51. *Id.* at 974.

52. *Cayward*, 552 So. 2d. at 974.

53. *Id.* at 973-74. The *Patton* court addressed the evidentiary concerns raised in *Cayward* because the fabricated evidence in *Patton* found its way into court. At the *Patton* trial, the police-fabricated audiotape was played for the jury, resulting in otherwise inadmissible evidence being heard. Although the jury was given a limiting instruction, the court determined that the prejudicial harm was already done. Additionally, the court reasoned that the tape provided a roadmap for the prosecution's case by demonstrating that the defendant had "fought with the victim, was violent towards women, was associated with drug users, and had shot the victim in the back while she was walking down the alley." The court did not allow such a neat summary of the prosecution's side to be presented to the jury. *Patton*, 826 A.2d at 798-99.

54. *Cayward*, 552 So. 2d. at 974.

In *Sheriff, Washoe County v. Bessey*, police created a falsified lab report indicating the defendant had committed a sexual assault against a minor.⁵⁵ The defendant confessed immediately after this report was presented to him.⁵⁶ *Washoe County* declined to adopt a *per se* rule. Instead, it adopted an extrinsic/intrinsic approach based on a Hawaii Supreme Court decision, *State v. Kelekolio*.⁵⁷

The extrinsic/intrinsic approach requires a court to first determine whether the falsehood was extrinsic or intrinsic.⁵⁸ An extrinsic falsehood is “a deliberate falsehood *extrinsic* to the facts of the alleged offense, which are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt.”⁵⁹ An intrinsic falsehood is “a deliberate falsehood *intrinsic* to the facts of the alleged offense.”⁶⁰ If the falsehood is deemed extrinsic, the court must find the confession inadmissible *per se* because it was obtained by coercion.⁶¹ However, if the falsehood is deemed intrinsic, the court must apply the totality of the circumstances test to determine whether the confession was voluntary.⁶²

The court in *Washoe County* determined that the fabricated reports were intrinsic because they were essentially misrepresentations made by the police regarding incriminating evidence.⁶³ The court thus applied a totality of the circumstances test and con-

55. 914 P.2d at 619.

56. *Id.*

57. *Id.* at 620.

58. *State v. Kelekolio*, 849 P.2d 58, 73 (Haw. 1993).

59. *Id.* Examples of extrinsic falsehoods are:

[1] assurances of divine salvation upon confession, [2] promises of mental health treatment in exchange for confession, [3] assurances of more favorable treatment rather than incarceration in exchange for confession, [4] misrepresenting the consequences of a particular conviction, [5] representation that welfare benefits would be withdrawn or children taken away unless there is a confession or suggestion of harm or benefit to someone.

60. *Id.* Examples of intrinsic falsehoods are:

[1] placement of the defendant's vehicle at the crime scene, [2] physical evidence linked to the victim in the defendant's care, [3] presence of defendant's fingerprints at the crime scene or in the getaway car, [4] positive identification by reliable eyewitnesses, and [5] identification of the defendant's semen in the crime scene.

61. *Id.*

62. *Id.*

63. *See* 914 P.2d at 621.

cluded that "there was nothing in the treatment of the defendant or the setting of the interrogation that was coercive."⁶⁴ The court found that Bessey voluntarily went to the police station and that the length of the interview was relatively short.⁶⁵ The only factor the court considered out of the ordinary was the production of the falsified lab report.⁶⁶ The court saw no *significant* difference between lying to the defendant through words and lying through the use of fabricated documents. It determined that there was nothing in the lab report that would have produced a false confession.⁶⁷ Finally, *Washoe County* concluded that a *per se* rule would conflict with the Supreme Court's use of the totality of the circumstances test in interrogation cases. The court stated that "as long as the [interrogation] techniques do not tend to produce inherently unreliable statements or revolt our sense of justice, they should not be declared violative of the United States Constitution."⁶⁸

Patton concluded its analysis by likening the case to other New Jersey cases that *per se* excluded confessions obtained in violation of mandated procedures.⁶⁹ In *State v. Reed*, the court held that statements obtained after a suspect requested an attorney are automatically inadmissible.⁷⁰ Similarly, in *State v. Presha*, the court held that statements obtained from an accused who is fourteen years old or younger are *per se* inadmissible unless a parent or guardian is present during the interrogation.⁷¹ *Patton* concluded that because the courts in *Reed* and *Presha* rejected the totality of the circumstances test and adhered instead to a *per se* rule, it could follow the same approach.⁷²

III. ANALYSIS

In sum, *Patton* adopted a *per se* rule suppressing confessions obtained using tangible police-fabricated evidence.⁷³ The court

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 622.

69. *Patton*, 826 A.2d at 801-02.

70. *State v. Reed*, 627 A.2d 630 (N.J. Sup. Ct. 1993).

71. *State v. Presha*, 748 A.2d 1108 (N.J. Sup. Ct. 2000).

72. *See Patton*, 826 A.2d at 802.

73. *Id.* at 805.

first distinguished interrogation techniques using verbal misrepresentations from those using physical misrepresentations by reasoning that the physical appearance of incriminating evidence would compel even an innocent person to confess.⁷⁴ This stringent approach prevents modern and effective interrogation techniques from being used. Instead, *Patton* should have employed the extrinsic/intrinsic approach demonstrated in *Sheriff, Washoe County*.⁷⁵ The following will discuss why adopting the extrinsic/intrinsic approach to determine the voluntariness of a confession is more appropriate than adopting a *per se* rule.

The extrinsic/intrinsic approach should have been applied in *Patton* because it incorporates the totality of the circumstances test, which is the basic test for voluntariness of confessions that the United States Supreme Court has set out.⁷⁶ Like the totality of the circumstances test, the extrinsic/intrinsic approach balances the desire to obtain confessions from guilty suspects with the Court's duty to uphold Fifth Amendment protections.⁷⁷ A *per se* rule, in contrast, fails to meet this balance because it only accounts for the individual's constitutional rights, while ignoring the benefits of obtaining confessions. In light of the Supreme Court's goals in interrogation cases, *Patton's* abandonment of the totality of the circumstances test was improper.

Patton suggested that the Supreme Court's application of the totality of the circumstances test was appropriate in analyzing confessions where the police merely made misrepresentations to the suspect, but was inappropriate in analyzing confessions where police used tangible, fabricated evidence.⁷⁸ The extrinsic/intrinsic approach should have been applied, however, because the distinc-

74. *See id.* at 795.

75. In *Washoe County*, the detective's lies, as well as the falsified lab reports, went to the strength of the evidence against the defendant, a consideration intrinsic to the facts of the alleged offence. Therefore, the court considered the totality of the circumstances to determine whether the confession was voluntary. The totality of the circumstances approach determined that since Bessey went to the police station voluntarily, the length of the interview was relatively short, and the only factor that was out of the ordinary was the production of the falsified lab report, there was nothing in the treatment of Bessey or the setting of the interrogation that was coercive. 914 P.2d at 621.

76. *Washoe County*, 914 P.2d at 621.

77. *Haynes v. Washington*, 373 U.S. 503, 514 (1963).

78. *See Patton*, 826 A.2d at 794.

tion between verbal and physical misrepresentations "is a distinction without a real difference."⁷⁹ Both verbal and physical misrepresentations involve police lying to suspects about incriminating evidence and have a similar probability of coercing an innocent person to confess to a crime that they did not commit.⁸⁰ Therefore, the distinction is not significant enough to mandate the adoption of a *per se* rule.

A *per se* rule should be reserved for only the most heinous circumstances.⁸¹ For example, a *per se* rule was adopted in *Brown v. Mississippi*, where confessions were obtained using physical abuse.⁸² It is apparent that *Patton* is unlike *Brown*; using tangible police-fabricated evidence to obtain a confession is more analogous to a police misrepresentation than to physical abuse. While physical abuse has a high probability of leading to an involuntary confession because the suspect will do and say anything to stop the pain, the use of tangible police-fabricated evidence would not have the same effect.⁸³

The intrinsic/extrinsic approach also should be applied to this case because *Patton's* reliance on *State v. Reed* and *State v. Presha* is unfounded. Unlike *Patton*, both *Reed* and *Presha* involve situations where a *per se* rule is necessary to protect an individual's rights. In *State v. Reed* a *per se* rule was necessary because the suspect was not informed that the attorney he requested had arrived.⁸⁴ The right to counsel during a police interrogation has been viewed as a necessary preventative measure to protect a suspect from self-incrimination.⁸⁵ Once an attorney is requested, the suspect has a right to consult with her.⁸⁶ Therefore, *Reed* established a necessary, firm rule, to enforce this right. Similarly, in *State v. Presha*, the court insisted on a *per se* rule to prevent juveniles under the age of four-

79. *Washoe County*, 914 P.2d at 621.

80. Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.- C.L. L. REV. 105, 146 (1997).

81. See *Reck v. Pate*, 367 U.S. 433 (1961), *Rochin v. California*, 342 U.S. 165 (1952). Both followed *Brown* in declaring that using physical abuse during interrogations renders the confessions involuntary. *Brown v. Mississippi*, 297 U.S. 278 (1936).

82. *Brown*, 297 U.S. at 286.

83. See generally Marcy Strauss, *Torture*, 48 N.Y.L. Sch. L. Rev. 203 (2004).

84. *Reed*, 627 A.2d at 631.

85. See *Miranda v. Arizona*, 384 U.S. 436, 467 (1966).

86. See U.S. CONST. amend. VI.

teen from being questioned without a parent or guardian present.⁸⁷ Although age is usually only one factor under the totality of the circumstances test, children fall under a special category. When children are involved there is an overriding concern for the protection of their rights because they have an “obvious disadvantage” in police interrogations.⁸⁸

The reasons for a *per se* rule in *Patton* are not on par with the reasons proposed in the above cases. A *per se* rule is necessary in *Reed* and *Presha* because both a person without the option to have counsel present and a child without the presence of a guardian are not adequately protected from being coerced to confess. In contrast, cases involving police-fabricated evidence, like *Patton*, do not involve a violation of an established fundamental right. Courts have upheld misrepresentations to suspects as long as they are not coercive in light of the surrounding circumstances. Therefore, a protection in the form of a *per se* rule is unnecessary.

The *Patton* court also adhered to the policy considerations and practical concerns raised in *Cayward*, but applied them improperly, leading to the adoption of a *per se* rule. The *Patton* court took a policy position that is in opposition to the considerations discussed at the initial trial. The lower court judge posited “there is no question that the use of trickery and deception provides a highly effective means of extracting confessions; and given the important role of confessions in law enforcement, police must be free to employ effective means of obtaining them.”⁸⁹ The method employed here is effective, as it is not barbaric, physically abusive or inherently wrong. Using police-fabricated evidence merely allows police to enter the technological era and use tools that are more sophisticated in order to elicit confessions. This method has a better chance of getting honest results, without going so far as to coerce an innocent person into confession.

Instead of adopting a *per se* rule, the *Patton* court should have applied the intrinsic/extrinsic approach to the facts of the case. The police-fabricated evidence in *Patton* was intrinsic, as it was “a misrepresentation by police regarding the existence of incriminat-

87. *Presha*, 748 A.2d. at 1110.

88. *Id.* at 1114.

89. *Patton*, 826 A.2d at 789.

ing evidence.”⁹⁰ Thus, the totality of the circumstances test should have been applied to assess whether the confession was voluntary. Regardless of the outcome, adopting an extrinsic/intrinsic test would be more appropriate as it would follow existing law and establish a just approach to handling tangible, police-fabricated evidence cases.⁹¹

90. *Washoe County*, 914 P.2d 618, 620.

91. The court applied the totality of the circumstances test and determined that “because the defendant was held [in custody] for nineteen hours before questioning; the jail admission form suggested heroin withdrawal; the confession came immediately after [the] defendant heard the fabricated audiotape. . . the entire interrogation lasted less than one hour; and the confession was prompted by police-fabricated evidence,” the defendant’s rights were violated and the case would need to be remanded. *Patton*, 826 A.2d at 803 n.7.