

Be Careful What You Say: Appellate Division Rules that Testimony Made During a Domestic Violence Proceeding May be Used In A Criminal Prosecution.

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On August 1, 2012, in *State v. Duprey*, the Appellate Division altered the landscape of [domestic violence](#) hearings in New Jersey and their parallel criminal cases. Prior to *Duprey*, the law in New Jersey had been that “testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant.” N.J.S.A. 2C:25-29(a).

In *Duprey*, the Appellate Division held that the quoted language above is tempered by the notion that a criminal defendant has a right under the Sixth Amendment to the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution, to confront witnesses used against him. When weighing the protections of N.J.S.A. 2C:25-29(a) against the right of a defendant to confront witness, the court held that such testimony can be used for the limited purpose of cross-examination on material issues.

One final point, nothing in *Gunther* alters the prohibition against using a domestic violence Defendant’s “DV testimony” as affirmative evidence in the related criminal prosecution. That is, as indicated above, the DV testimony can only be used for cross-examination purposes.

