



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 284

July 23, 2004

QUESTION FIRST, GIVE THE WARNINGS AND REPEAT QUESTIONS VIOLATE MIRANDA

Reference: Missouri United States Supreme Court
v. No. 02-1371
Patrice Seibert June 28, 2004

FACTS:

Seibert's 12-year-old son, Jonathan, died in his sleep from cerebral palsy. Because Jonathan had bedsores on his body, Patrice thought that she might be charged with child neglect. Two of her teenage sons and two of their friends, along with Patrice, devised a plan to conceal the facts surrounding Jonathan's death by incinerating his body in the course of burning the family's mobile home. Donald Rector, a mentally ill teenager who lived with the family was in the residence at the time of the fire and died.

Five days after the fire, police awakened Patrice at 3:00 a.m. at a hospital where one of her son's involved in the fire was being treated for burns. The arresting officer, following instructions from another officer, refrained from giving Patrice Miranda warnings. Later at the police station, the officer questioned Patrice for 30-to-40 minutes. After Patrice admitted she knew that Donald was meant to die in the fire, she was given a 20-minute coffee and cigarette break. The officer then turned on a tape recorder, gave Patrice the Miranda warnings and obtained a signed waiver of rights from her. The officer resumed the questioning and took a statement from her.

At the suppression hearing, the officer testified that he made a conscious decision to withhold Miranda warnings, resorting instead to an interrogation technique he had been taught--question first, then give the warnings, and then

repeat the question "until I get the answer that she's already provided once."

ISSUE:

Does the question-first tactic used in this case violate Miranda?

HELD: Yes--Seibert's postwarning (repeated) statements are inadmissible.

REASONING:

1. Failure to give Miranda warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained. Conversely, giving the warnings and getting a waiver generally produces a virtual ticket of admissibility, with most litigation over voluntariness ending with valid waiver finding. (emphasis added)

2. The object of question-first is to render Miranda warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed. There is no practical justification for accepting the formal warnings as compliance with Miranda, or for treating the second stage of interrogation as distinct from the first, unwarned and inadmissible segment.

NOTES:

Some police academies throughout the U.S. (e.g., Police Law Institute, Illinois Police Law Manual) are instructing that "officers may conduct a two-stage interrogation." Alaska has not subscribed to or instructed this method.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 284 numerically under Section R of the manual.