



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 125
November 11, 1988

RIGHT TO COUNSEL PRIOR TO
COMMENCEMENT OF ADVERSARIAL PROCEEDING

Reference: Roger V. Thiel
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 855
P.2d
October 14, 1988

FACTS:

Two masked men entered a supermarket and demanded money at gunpoint. A third man, armed with a rifle, stationed himself as a lookout outside the back of the store. Police arrived while the robbery was in progress. The man outside the store fired at police and then fled on foot. The two men inside ran out the back door; after a brief exchange of fire, one of the men was shot and killed. The second man, Sidney DeGross, was captured.

DeGross exercised his right to remain silent and refused to identify the man who got away. Police developed Roger V. Thiel and John Walker as "possible suspects." Later that day, a police officer spotted Thiel and Walker as they drove up to Thiel's residence. Both men were asked if they would be willing to go to the police station to be interviewed and they both declined. Thiel told the officer that he was remaining silent on advice of counsel.

The following day, Walker contacted police and told them that, whereas he had been involved in robberies with DeGross and Thiel on other occasions, it was Thiel who acted as the lookout on this one. Walker agreed to cooperate with police and a Glass warrant (see Legal Bulletin No. 16) was obtained.

Thiel made admissions to Walker concerning the robbery and the conversation seized by police was used at Thiel's trial. Thiel argued that the Alaska Constitution prohibited police from surreptitiously recording his conversation, because he expressly invoked his right to counsel and to remain silent when he was initially contacted.

ISSUE:

Does Article I, Section II, of the Alaska Constitution bar police-initiated contact between an informant and a person who, like himself (Thiel), is the focus of a criminal investigation and who expressly invokes the right to counsel upon being subjected to an investigative stop?

HELD: No.

REASONING:

1. Article I, Section II, of the Alaska Constitution does not purport to guarantee the right to counsel in the abstract; rather, it assures this important right to those who stand accused in "criminal prosecutions." (emphasis added)

2. By its own express terms, the constitutional guarantee of counsel finds root in the inception of a formalized adversary relationship between the state and an individual--some formal action by which the government places itself in an accusatory posture against a citizen. (emphasis added)

3. The police conduct which Thiel challenged in this case involved no actual interference with Thiel's efforts to retain and consult with counsel, nor was there any active incursion into nor impairment of the attorney/client relationship that Thiel had established.

NOTES:

In this case, Thiel had not been arrested nor "formally" charged; the results would have been different, however, if he had been charged or on bail.

The court cites a few Alaska cases, which should be reviewed:

Blue v. State (Legal Bulletin No. 2)--defendant is entitled to counsel at lineup after arrest, unless exigency exists.

Roberts v. State (Legal Bulletin No. 5)--defendant entitled to counsel when police obtain handwriting exemplars.

The above two cases involved defendants who had been arrested (Blue) or formally charged (Roberts).

NOTE TO SUBSCRIBERS TO THE ALAKSA LEGAL BRIEF MANUAL:

Add this case to Section O on Page 12 and Section L on Page 9 of your "Contents" and to Sections O-2 and L-3 of the "Text". File Legal Bulletin No. 125 numerically under Section R of the manual.