



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 334

February 2, 2009

**MIRANDA VIOLATIONS FROM ONE INTERVIEW RULED
"HARMLESS ERROR" AND STATEMENTS OBTAINED DURING
THIRD AND FOURTH INTERVIEWS ARE ADMISSIBLE**

Reference:

Byron M. Kalmakoff
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 2207
P.3d
January 16, 2009

FACTS:

The body of a young female, B.K., was found near the airport at Pilot Point, Alaska. Village Public Safety Officer (VPSO) Molly Etuckmelra responded to the scene. B.K. had been shot twice in the head and had also been sexually assaulted. Two State Troopers responded to Pilot Point to assist in the investigation. It was learned that B.K. had attended a party in a local residence the night before her body was found. At the request of the troopers, VPSO Etuckmelra and the City Manager contacted everyone who attended the party and asked them to come to the city office building to be interviewed. VPSO Etuckmelra went to the local high school and informed the school principal that she would like to transport three male students, including KALMAKOFF (who was fifteen years old at the time), to the city office. The record is unclear if any of the students' parents/guardians were contacted prior to them leaving the school or if the students were informed that they did not have to leave with, or talk to the police.

This case involves four interviews of KALMAKOFF.

INTERVIEW NO. 1: The first interview lasted about one and a half hours. He told the troopers that he had been at the party and that he and a friend left at about 2:00 a.m. He said at about 4:00 a.m., he returned to the party to check on B.K. He said B.K. was passed out on a couch. He woke her up and she went to the bathroom and then returned to the couch. KALMAKOFF then told the troopers that he went downstairs and went "snooping" around. He found a pistol. He said the pistol was loaded with blanks. The pistol was removed from the house and he and his friend fired it several times using blanks. The gun was then returned to the house. He also told the troopers that he had consumed alcohol both during the party and after he had left the party. When asked, KALMAKOFF denied that he had fired the weapon in the house where the party took place. KALMAKOFF asked the troopers how much more time he was going to be there; he was told "a little

bit." Troopers looked at KALMAKOFF's shoes and thought the soles looked like impressions in the snow near where B.K.'s body had been found. The troopers then left the city office with KALMAKOFF and walked around the village with him. KALMAKOFF asked: "Do I have to go back to the city office building again?" The troopers responded: "Yeah, we're not even done. . . ." The troopers wanted to obtain a search warrant to search his residence for evidence. Upon returning to the city office building, the troopers seized KALMAKOFF's four wheeler, his shoes, and his coat and gloves as evidence. The troopers instructed KALMAKOFF and his grandmother, who KALMAKOFF lived with, not to go back to their residence until given permission to do so by the troopers. The first interview ended at this point.

INTERVIEW No. 2: The following day, the troopers asked KALMAKOFF to leave the school and talk to them at the city office building; that interview lasted about forty minutes. KALMAKOFF was told that he was free to leave at any time he wished. KALMAKOFF immediately announced he did not want to talk to the troopers, the troopers refused to let him go, and they continued to interrogate him. He told the troopers that he wanted to go back to school. He asked on several occasions to go back to school or to be allowed to go to his grandmother's house. At about this point, the troopers, for the first time, gave KALMAKOFF his Miranda rights. When asked if he wanted to talk to them, KALMAKOFF shook his head "no." The troopers continued talking to KALMAKOFF who said: "Do I have to stay here?" Troopers responded: "Yea, we're going to have you stay here for a little while." During this continuing interrogation, KALMAKOFF admitted to drinking a half pint of whiskey on the evening of the homicide. But, almost immediately after making this admission (minor consuming) he said: "I don't really feel like answering questions." At this point, the troopers finally honored KALMAKOFF's invocation of his right to silence; they stopped interrogating him.

INTERVIEW No. 3: Later in the day, Troopers went to KALMAKOFF's home. School was over for the day so both KALMAKOFF and his two grandparents were home. The troopers said they could all get together and talk for a few minutes and get "this thing taken care of and get on with life." The troopers also reminded KALMAKOFF about what they had read (Miranda warning) earlier. KALMAKOFF was told it was his choice to talk to them. By the time the third interview (which lasted about twenty-five minutes) was over, KALMAKOFF had admitted getting into an argument with B.K. about his drinking, and that during this argument, he accidentally shot her. He also admitted that he carried B.K.'s body outside and placed it in some bushes. Troopers did not take KALMAKOFF into custody at that time; they left him at home.

INTERVIEW No. 4: The following afternoon the troopers went to the Pilot Point school to take KALMAKOFF into custody and fly him to

McLaughlin Youth Center in Anchorage. After picking him up, the troopers asked KALMAKOFF if he would ride around with them and "talk with them about what happened." He agreed to do so. KALMAKOFF said he didn't do it on purpose and wanted the troopers to tell other people in the village and to clarify that it was an accident. KALMAKOFF said: "It's that dang booze." At this point KALMAKOFF was advised of his Miranda rights, as well as his right to have a parent or guardian present. KALMAKOFF waived his rights.

KALMAKOFF moved to suppress all information obtained from the four interviews. The Superior Court Judge hearing the case ruled that KALMAKOFF was not in custody when the first interview began but that about mid-way through this first interview it did become custodial. The judge also ruled that KALMAKOFF was in custody throughout the second interview. The Judge further ruled that these Miranda violations (interviews one and two) did not taint the third and fourth interviews.

KALMAKOFF appealed the judge's ruling arguing that if interviews one and two were obtained in violation, then interviews three and four were tainted and all evidence (statements) should be suppressed.

The Court of Appeals ruled that there was not enough information in the record to determine if KALMAKOFF was in custody during the entire first interview. Part of this was because it was unknown what the school principal told KALMAKOFF about his right to refuse to go with, or speak to the troopers about the case. The Court of Appeals assumed that both interviews one and two were taken in violation of Miranda and concluded that because the only incriminating statements KALMAKOFF made were (1) removing the gun from the house where the party occurred and (2) consuming alcohol. He did not admit to killing or sexually assaulting B.K. during interviews one and two. The court ruled that even if it was an error to admit statements from the first interview at KALMAKOFF's trial, that error was harmless beyond a reasonable doubt.

The court here addresses interviews three and four only.

ISSUE:

Do these Miranda violations (interviews one and two) require suppression of KALMAKOFF's statements from the two (interviews three and four) ensuing interviews?

HELD:

No. The statements KALMAKOFF made at the third and fourth interviews are admissible even if we assume that the entire first interview should be suppressed.

REASONING:

1. We have assumed that there was a Miranda violation at the first interview because KALMAKOFF was taken from school by the VPSO, transported to the interview at the city office building, and never expressly advised that he could refuse to participate in the interview, or could refuse to answer particular questions, or could insist on the presence of a parent or guardian. The conduct of the troopers during the second interview was an egregious violation of Miranda. Nevertheless, the troopers obtained little information (minor consuming and removal of the gun) from this violation.

2. There was a significant amount of time, approximately three and a half hours, between the second and third interviews. During this time KALMAKOFF remained at liberty. KALMAKOFF had an opportunity to speak with family and friends during the several hours preceding the third interview.

3. The third interview took place at KALMAKOFF's home rather than at the city office building. KALMAKOFF was not in custody during this third interview, and both his grandparents were present during the interview.

4. The troopers did not use lies, trickery, or other deception to induce KALMAKOFF to agree to this third interview.

5. The (third) interview lasted less than twenty-five minutes; KALMAKOFF never expressed a desire to stop the interview, nor any reluctance to continue answering questions. Evaluating the totality of the circumstances, the third interview was sufficiently insulated from the Miranda violations that occurred at the first and second interviews.

6. Our conclusion with respect to the third interview leads us (Court of Appeals) to the same conclusion with respect to the fourth interview; KALMAKOFF's statements during this fourth interview were likewise admissible.

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