



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 152
February 11, 1991

THE RIGHT TO COUNSEL DURING CUSTODIAL INTERROGATION

Reference: Robert S. Minnick
v.
Mississippi

United States Supreme Court
59 USLW 4037 (No. 89-6332)
December 3, 1990

FACTS:

After escaping from jail, Minnick and a fellow prisoner broke into a residence in search of weapons and killed two people. A warrant was issued and Minnick was arrested in California about four months after the homicides.

Two FBI agents went to the jail to interview Minnick. Minnick testified that he refused to go to the interview, but was told by the jailer he would "have to go down or else." The FBI agents advised Minnick of his Miranda rights; he acknowledged that he understood them, but refused to sign a waiver. Minnick proceeded to describe the escape and subsequent homicide and then stated, "Come back Monday when I have a lawyer..." The FBI interview was then terminated. After the FBI interview, Minnick spoke with his court-appointed lawyer on two or three occasions.

Several days later, a Deputy Sheriff from Mississippi came to the San Diego jail to question Minnick. Minnick testified that the jailers again told him he "would have to talk." The Deputy Sheriff advised Minnick of his Miranda rights. Minnick refused to sign a waiver, even though he acknowledged understanding his rights. He then proceeded to describe the escape and murders.

The trial court suppressed statements made to the FBI, but allowed the State to use the statements made to the Deputy Sheriff. Minnick appealed his case to the Mississippi Supreme Court, which ruled that the statements could be used because they were given to the Deputy Sheriff after counsel had been made available to him.

Minnick appealed to the United States Supreme Court.

ISSUE:

Can Minnick's police-initiated interview and confession be used against him at trial since he previously consulted with a lawyer?

HELD: No.

REASONING:

1. When counsel is requested, interrogation must cease and officials may not re-initiate interrogation without counsel present whether or not the accused has consulted with his attorney. (emphasis added)

2. An accused, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with police. (citing Edwards; emphasis added)

3. There can be no doubt that the interrogation in question was initiated by the police; it was a formal interview which Minnick was compelled to attend.

NOTES:

This case reinforces other opinions decided by the United States Supreme Court and the Alaska Court of Appeals. Even though the defendant conferred with counsel while in custody, he cannot be interviewed unless he initiates it.

Review of Section P, and specifically the following cases, in the Alaska Legal Briefs manual is recommended:

Edwards v. Arizona, Legal Bulletin No. 48--once counsel is requested, police may not further interview the defendant unless he initiates contact.

Sheakley v. State, Legal Bulletin No. 55--statement admissible where in-custody defendant initiated contact with police after he had opportunity to consult with counsel.

Oregon v. Bradshaw, Legal Bulletin No. 74--confession admitted where defendant first requested counsel then "changed his mind" by initiating contact.

Depp v. State, Legal Bulletin No. 87--non-custodial defendant spoke with police against advice of counsel and statement was allowed.

Smith v. Illinois, Legal Bulletin No. 89--police must scrupulously honor request for lawyer.

Arizona v. Roberson, Legal Bulletin No. 124--custodial interrogation must cease until an attorney is present or the defendant initiates contact with police.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P of your Contents and Text. File Legal Bulletin No. 152 numerically under Section R of the manual.