



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 206
October 7, 1996

INVOLUNTARY CONFESSION

Reference: George C. Cole
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1481
P.2d
September 20, 1996

FACTS:

Sixteen-year-old C.C. reported she had been sexually assaulted by Cole, her adoptive father. Sometime later, George Cole reported to police that C.C. was a "runaway" and he had heard she had been accusing him of molesting her.

At the request of police, Cole went to the police station where he was interviewed regarding the allegations made by C.C. The interview, which lasted about seventy minutes, was tape-recorded. The officer assured Cole he was not in custody and would not be arrested that night, irregardless of the outcome of the interview.

During the course of the interview, the officer employed a variety of deceptive tactics; he (a) threatened Cole with a court-ordered polygraph, (b) falsely claimed police had obtained incriminating evidence pursuant to a Glass warrant, and (c) gave repeated assurances that the purpose of the interview was to get help for Cole and/or his family.

Initially, Cole maintained his innocence. Ultimately, he admitted that he had "touched C.C. for his own sexual pleasure" and that he "needed psychological help."

ISSUE:

Should the confession be suppressed?

HELD: Yes--it was involuntary.

REASONING:

1. The police could not have obtained a court order requiring Cole to take a polygraph. The issuance of such an order obviously would have contravened Cole's privilege against self-incrimination.

2. The Glass warrant tactic cannot be determined in the abstract, but must instead be decided in light of other coercive elements of Cole's interrogation--principally (a) the polygraph threat, and (b) assurances that the purpose of the interview was to get help for Cole and his family.

3. Ordinarily, promises and inducements are not improper as long as, under the totality of the circumstances, the defendant's confession is voluntary. (emphasis added)

4. Cole's confession was obtained "by...psychological coercion or by improper inducement so that his will was overborne."

5. The use of trickery does not per se render a confession involuntary and most authorities hold that confessions produced by trickery are admissible so long as the device employed would have no tendency to produce an untruthful confession.

NOTES:

In Sovalik v. State, 612 P.2d 1003 (no Legal Bulletin), the Alaska Supreme Court upheld a confession where police lied about finding Sovalik's fingerprints at the scene of a double homicide.

In this case, the officer made false assertions about his obtaining court orders regarding the polygraph and the Glass warrant.

Be aware that, in Footnote #13 of this opinion, the court recommended to the police that full Miranda warnings be given in any case where it is doubtful whether the suspect taking the lie-detector test is in custody. That is good advice. This will help establish that you have treated suspects in a fair manner.

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. 206 numerically under Section R of the manual.