



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 246

April 23, 2001

SIXTH AMENDMENT RIGHT TO COUNSEL
IS "OFFENSE SPECIFIC"

Reference:

Texas
v.
Raymond Levi Cobb

United States Supreme Court
No. 99-1702
U.S. _____
April 2, 2001

FACTS:

Lindsey Owings contacted police to report that his house had been burglarized and his wife, Margaret, and 16-month-old daughter, Kori Rae, were missing. Acting on an anonymous tip, police interviewed Raymond Levi Cobb who lived across the street from the Owings' residence. Cobb denied all knowledge of the burglary. Seven months later, while under arrest for an unrelated offense, Cobb was again interviewed about the burglary and missing persons. Cobb admitted he committed the burglary, but denied knowledge relating to the disappearances. Cobb was subsequently indicted for the burglary and Hal Ridley was appointed to represent him. Ridley allowed police to question Cobb about the disappearance of Margaret and Kori Rae; Cobb continued to deny all knowledge of that event.

Sometime later, Cobb was free on bond on the burglary case and was living with his father. Cobb's father contacted police to report that his son confessed to him that he had killed Margaret and Kori Rae. Cobb was taken into custody and police administered Miranda warnings. Cobb waived these rights and gave police a statement. He ultimately showed police where he had buried the bodies of Margaret and Kori Rae. Police did not attempt to contact Hal Ridley (the lawyer appointed to represent Cobb in the burglary of Owings' residence) at any time during the interview.

ISSUE:

Does the Sixth Amendment right to counsel extend to offenses which are "factually related" to those that have actually been charged?

HELD: No--the Sixth Amendment right is "offense specific."

REASONING:

1. Citing the Blockburger test--"where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not." (see Blockburger v. United States, 284 US 299)

2. At the time Cobb confessed, he had been indicted for the burglary of the Owings' residence but had not been charged for the murders. Burglary and murder are not the same offense.

3. The Sixth Amendment right to counsel did not bar police from interrogating Cobb regarding the murders and his confession was admissible.

NOTES:

Review of Section P of your manual is recommended--especially Kochutin v. State, Legal Bulletins No. 161 and 186.

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. 246 numerically under Section R of the manual.