



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 154
February 19, 1991

RIGHT TO COUNSEL--INVOLUNTARY WAIVER

Reference: Lou V. Brewer, Warden
v.
Robert Anthony Williams

United States Supreme Court
430 US 387
March 23, 1977

FACTS:

Des Moines, Iowa, police obtained a warrant for Williams' arrest for the abduction of a 10-year-old girl, Pamela Powers. Several days after the warrant was issued, a lawyer contacted Des Moines police stating that Williams wanted to turn himself in to the Davenport, Iowa, police. Davenport is located about 160 miles east of Des Moines.

Williams did surrender and consulted by telephone with his Des Moines lawyer as well as one in Davenport. On advice of counsel, Williams exercised his Miranda rights and refused to make a statement to police. Des Moines detectives drove to Davenport to transport Williams back to Des Moines.

The Davenport lawyer conferred again with Williams and instructed officers that there was to be no interrogation of Williams during the automobile journey to Des Moines. The lawyer was denied permission to ride in the police car back to Des Moines.

During the trip, Williams expressed no willingness to be interrogated in the absence of an attorney, but instead stated several times that he would tell the whole story after seeing his Des Moines lawyer. One of the police officers knew that Williams was a former mental patient and was deeply religious. The officer referred to Williams as "Reverend." The officer told Williams that "the parents should be entitled to a Christian burial for their little girl, who was snatched away from them on Christmas eve and murdered." Williams subsequently directed the officers to the body of Pamela Powers.

ISSUE:

Did Williams make a knowing and intelligent waiver of his Miranda rights and did the police scrupulously honor his right to counsel?

HELD: No.

1. Waiver requires not merely comprehension, but relinquishment; Williams' consistent reliance upon the advice of counsel in dealing with the authorities refutes any suggestion that he waived his rights.

2. There can be no serious doubt that the officer deliberately and designedly set out to elicit information from Williams, just

as surely as--and perhaps more effectively than--if he had formally interrogated him. (emphasis added)

NOTES:

Nothing in this opinion prohibits the use of statements volunteered by a defendant who initiates communication with the police--see State of Rhode Island v. Thomas J. Innis, Legal Bulletin No. 153, and referenced cases. This case, like Robert Edwards v. State of Arizona, Legal Bulletin No. 48, prohibits officers from initiating communication with a defendant who has exercised his Miranda rights and requested counsel. If, for instance, you are transporting a prisoner to or from court and hear a defendant make a statement concerning a case, you should prepare a report for the prosecutor regarding the "overheard" statement.

After this case was overturned, Williams sought to have the photographs of the body suppressed. He argued that the photographs were obtained as a result of the illegal confession. The United States Supreme Court--see Crispus Nix, Warden, v. Robert Anthony Williams; Legal Bulletin No. 85--ruled against him stating that the evidence or body would have "inevitably" been discovered.

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