



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 107
September 29, 1986

RIGHT TO COUNSEL--VOLUNTARY WAIVER

Reference: William E. Plant
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 640
724 P.2d 536
September 5, 1986

FACTS:

Plant was arrested for joyriding in a vehicle which had been linked to the burglary of a business. At the police station, Plant was read his rights and told he was in lots of trouble, but if he started talking he wouldn't be handled as firmly. Plant invoked his right to remain silent and was placed in jail. Later that day, he was arraigned and, when the judge informed him of his rights, he declined the appointment of a public defender and stated he would be represented by private counsel. After he was returned to the police station, a police officer made two attempts to contact the lawyer Plant requested. The lawyer was out of the city. When told of the unavailability of the lawyer, Plant was asked if he had any other choices; he told the officer that a friend would help him obtain representation.

On the following day, Plant indicated he wanted to talk to the police. After the Miranda warnings were read to Plant and he stated that he understood his rights, the officer asked him if he understood what lawyers do; Plant responded, stating he knew they would "stick up" for him and he was aware of being entitled to a public defender. The officer pointed out to Plant that he had requested an attorney on the previous day and said he did not want to make any statements. Plant told the officer that he had changed his mind about making statements, but still didn't want an attorney. He said, "I just want to get this over with." Plant further indicated that no threats nor promises had been made to him. Plant then furnished police with a statement implicating himself in a number of recent burglaries.

ISSUE:

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

HELD: Yes.

REASONING:

1. A defendant who invoked his right to remain silent and requested counsel may still waive his Sixth Amendment right to obtain counsel or have counsel present during interrogation.
2. In determining whether Plant's waiver of his earlier request for counsel was constitutionally effective, the trial court found that Plant had initiated discussions with police which led to his confession.

3. Plant's statements to police were voluntary.

NOTES:

This case is a good example of the importance of recording statements from suspects and/or defendants.

Review of the following cases is recommended:

Edwards v. Arizona, Legal Bulletin No. 48--once defendant invokes his rights to counsel and to remain silent, he or she must initiate further contact with police.

Sheakley v. State, Legal Bulletin No. 55--defendant first requested counsel, then changed his mind.

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

Alili v. State, Legal Bulletin No. 77--police did not obtain a waiver of rights.

Depp v. State, Legal Bulletin No. 87--suspect elected to talk to police despite advice from his attorney to the contrary.

Smith v. Illinois, Legal Bulletin No. 89--defendant asked about a lawyer while police were reading Miranda rights, but officer kept reading and failed to obtain proper waiver.

Hempel v. State, Bulletin No. 97--when defendant asked how he could obtain a lawyer, the officer told him of difficulties without first appearing in court and establishing his indigency; subsequent waiver was invalid, because officer did not scrupulously honor request for counsel.