



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 113
June 14, 1987

ENTRAPMENT RIGHT TO COUNSEL
AND TO REMAIN SILENT

Reference: James McLaughlin
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 710
P.2d
June 5, 1987

FACTS:

McLaughlin was out on bail awaiting trial for possession of cocaine; he was represented by an attorney. McLaughlin contacted a police officer by telephone and told him that the officer's son was involved in selling drugs. The officer contacted an investigator and said he believed that he had received a threatening telephone call from McLaughlin.

McLaughlin called the officer again that day, making allegations about his son selling drugs. During the evening, McLaughlin called the police station and left a message with the dispatcher to inform the officer that there would be trouble concerning the officer's son, that they would all be in court and everyone would hear about it.

The officer was given McLaughlin's message; he returned to the police station with the investigator. The officer telephoned McLaughlin and, during the conversation, McLaughlin made additional claims regarding the officer's son being involved in drug sales and said, (regarding the pending case) "My charges are bullshit." McLaughlin suggested his charges should be dropped in "return for forgetting about everything else." This was apparent reference to the officer's son being involved with selling drugs.

After this telephone conversation between the officer and McLaughlin (which had been recorded), the investigator consulted with the District Attorney and a warrant and complaint was drawn charging McLaughlin with attempted interference with official proceedings.

McLaughlin argued that the officer's conduct amounted to entrapment and violated his Sixth Amendment right to an attorney--he was represented on the pending charge and the officer failed to consult the attorney prior to calling him--and his Fifth Amendment right to remain silent.

ISSUE:

Did the telephone call from the officer to McLaughlin's home amount to improper action constituting entrapment?

HELD: No.

REASONING:

1. The first contacts were initiated by McLaughlin.
2. The officer neither pressured McLaughlin nor took advantage of friendship or any of McLaughlin's weaknesses.
3. Where a suspect embarks on a new criminal venture, distinct from the one for which criminal charges are pending and for which the defendant has not been interrogated or taken into custody, no Sixth Amendment rights have yet attached with regard to the new crime.

NOTES:

McLaughlin initiated contact with the officer and did not assert that his statements were not voluntary. He was not "in custody" at the time of the telephone conversations. The police, therefore, were not required to advise him of his Miranda rights.

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