



DPS TRAINING BULLETIN

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THE RIGHT TO COUNSEL DURING CUSTODIAL INTERROGATION

<u>Reference:</u> Jacob B. Kochutin, Jr. v. State of Alaska	Alaska Court of Appeals Opinion No. 1137 <u>P.2d</u> June 14, 1991
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FACTS:

Around June 24, 1984, a seven-year-old boy referred to as T.T. disappeared from his home. Thirteen months later on July 25, 1985, T.T.'s body was discovered in a trunk in the home of Kochutin's uncle. An autopsy revealed that T.T. had been sexually abused and stabbed to death. Kochutin, a suspect in the case, was in prison serving a sentence for unrelated offenses at the time T.T.'s body was discovered.

Kochutin was moved from minimum security to a segregation unit in the institution. He then contacted the lawyer who had represented him on several previous cases and his current offense and asked him to find out why he had been moved. The lawyer learned that Kochutin was a suspect in the death of T.T. and police were wanting to interview him.

The lawyer later contacted both the police and District Attorney's office and informed them that Kochutin did not want to be interviewed regarding the death of T.T. The lawyer also said, however, that he would inform them if Kochutin later changed his mind. He then followed through by writing both the police and District Attorney regarding Kochutin's request.

About a year later, the police contacted the District Attorney's office. They again asked to interview Kochutin regarding the death of T.T. The District Attorney advised police officers to contact Kochutin, who was in jail on unrelated offenses, and attempt to interview him without notifying the attorney who had previously represented him.

Police made contact with Kochutin at the jail and advised him of his Miranda rights. They reminded him that he had been previously represented and he was entitled to have his lawyer present during the interview. Kochutin waived his Miranda rights and declined to have the lawyer present.

Five interviews were conducted with Kochutin over an eight-day period. He ultimately admitted sexually molesting T.T. and said he had "accidentally" stabbed him when T.T. tried to run away.

At his trial, Kochutin argued that the statements were taken in violation of his Miranda rights, because his lawyer had told both the police and District Attorney that he did not want to talk with them regarding the death of T.T.

ISSUE:

Were the police-initiated interviews impermissible because of Kochutin's prior decision, which he communicated through his counsel, not to speak with authorities about the T.T. homicide?

HELD: Yes.

REASONING:

1. Kochutin actually remained in continuous custody between August 1985, when he first invoked his Miranda rights, and August 1986, when he was interviewed by police without notifying his attorney.
2. The police-initiated interviews with Kochutin were custodial in nature and the Edwards rule--see Legal Bulletin No. 48--requires police to have notified Kochutin's attorney. Kochutin's apparent willingness to waive his Miranda rights is inconsequential.
3. It is clear from the record that police and the District Attorney believed it likely to be able to obtain a statement from Kochutin if they could interview him without his attorney present and most unlikely if the attorney had been present.
4. The police-initiated interrogations of Kochutin were impermissible under the rule of Edwards. Even if Edwards were inapplicable under totality of the circumstance, Kochutin did not knowingly, intelligently and voluntarily waive his Miranda rights.

NOTES:

This case was decided on custody and voluntariness of the Miranda waiver. The defendant was in custody on another charge and no formal charges were brought against him in the T.T. homicide. The court felt police should have contacted his attorney prior to the interviews on the uncharged crime. The state Attorney General can appeal this decision to the Alaska Supreme Court and/or to the United States Supreme Court on the Miranda issue.

Review of Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Alaska Legal Briefs manual is recommended--especially Edwards, Legal Bulletin No. 48, and Minnick, Legal Bulletin No. 152.

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. 161 numerically under Section R of the manual.