



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 324

February 22, 2008

CUSTODIAL-INTERROGATION STATEMENTS
ELICITED WITHOUT MIRANDA WARNINGS
WILL NEGATE ANY POST-MIRANDA STATEMENTS

Reference:

Thomas E. Klemz
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 2126
 P.3d
November 30, 2007

FACTS:

Klemz was on probation for felony driving while intoxicated. He arrived at a scheduled probation appointment smelling of alcohol beverages. One of his conditions of release on probation was that he refrain from using alcohol. At the request of his probation officer, Klemz took a breath test; it showed that he had a blood alcohol level of .221 percent. Following the test, the probation officer arrested Klemz for violating his probation. Klemz was searched and handcuffed. As they (probation officer and Klemz) were walking down the hall, the probation officer asked Klemz how he had gotten to the probation office. Klemz answered that he had driven there in his truck. When KLEMZ admitted that he had driven himself to the probation office, he was brought back to the office and the police were called. When the police officer contacted KLEMZ, the officer said: "You obviously drove over here so I gotta ask you a couple questions." The officer then read the Miranda warnings to Klemz. The officer then got some admissions from Klemz regarding his (Klemz) driving to the probation office while under the influence of alcohol. Klemz was subsequently arrested for felony driving under the influence.

Klemz argued that both the statement he had given to the probation officer and to the police officer violated his Miranda rights.

ISSUE:

Was the initial statement to the probation officer and later statement to the police officer obtained as a result of a custodial interrogation that had not been preceded by Miranda warnings?

HELD: Yes -- the probation officer's initial question was reasonably likely to elicit an incriminating response from Klemz and the police officer's follow-up question was almost certain to do so.

REASONING:

1. Klemz was in custody, he was not warned of his rights, and he was questioned (by the probation officer) in a way that was reasonably likely to elicit an incriminating response.

2. Despite the police officers later administration of Miranda warnings, Klemz's statements to the officer were indeed tainted by the earlier Miranda violation.

3. As in Crawford (see Legal Bulletin No. 287), this midstream administration of Miranda warnings did not effectively apprise Klemz of the nature of his rights and the consequence of abandoning them. Klemz's post-warning reiteration of his confession stemmed from an improper exploitation of his earlier confession -- the one obtained in violation of Miranda. Thus, Klemz's post-warning statements as to the police officer are no more admissible than his pre-warning statements made to the probation officer.

NOTES:

Review Crawford v. State (Legal Bulletin No. 287) that is very similar to this case. Crawford was arrested, handcuffed and then questioned without being advised of his rights. The officer later gave Crawford the Miranda warning and Crawford waived. However, the court ruled that the "midstream administration" of Miranda warnings violated his Miranda rights and his subsequent admissions were ruled inadmissible. See also Rhode Island v. Innis (Legal Bulletin No. 153) where the pertinent question addressed by the U.S. Supreme Court is whether a question is likely to elicit an incriminating response.

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File Legal Bulletin No. 324 numerically under Section R of the manual.