



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 356

August 9, 2011

MIRANDA VIOLATIONS IN FIRST AND SECOND INTERVIEWS TAINT SUBSEQUENT INTERVIEWS REQUIRING SUPPRESSION OF STATEMENTS

Reference:

Byron Kalmakoff
v.
State of Alaska

Alaska Supreme Court
Opinion No. S13439
P.3d
July 29, 2011

FACTS:

The Alaska Supreme Court reverses the Alaska Court of Appeals finding (see Bulletin no. 334) in this opinion. The case involves a total of four statements of a 15-year-old boy. The Court of Appeals had previously ruled that although troopers had violated the boy's Miranda rights on two separate interviews, that was a harmless error and the subsequent (third and fourth) interviews were admissible. The Supreme Court disagreed.

This bulletin will address the first and second interviews.

B.K., a 27-year-old woman, was murdered and sexually assaulted. She had been shot twice in the head. The crime took place in the village of Pilot Point. The village public safety officers (VPSO) requested assistance from the Alaska State Troopers. During the investigation, troopers learned that B.K. had attended a party the night before her body was found. A list of the people who had likely attended the party was developed. Three people on the list, including Kalmakoff (who had turned 15 only a few weeks before) were students in school. The troopers wanted to talk to all these persons on the list. The VPSO drove to the school and informed the principal to get Kalmakoff for the troopers so they could interview him. The principal had also received a call from the school superintendent's office in King Salmon authorizing the principal to release students for interviews with the troopers. The VPSO told the students that the troopers needed to get some information from them. The VPSO drove the students to the city building.

Kalmakoff was not told that he did or did not have to accompany the VPSO to the city offices; it is likely that he believed he had no choice and had to go. Nobody, the school, VPSO, or troopers, contacted Kalmakoff's grandparents - who were also his adoptive parents - to inform them about the interview.

Troopers did not tell Kalmakoff that he was free to leave or that he did not have to answer their questions; instead, they emphasized that he needed to tell them the truth. The trooper told Kalmakoff that he (the trooper) "will probably know if you're lying to me." No Miranda warnings were given. Kalmakoff admitted that he had been drinking on the night of the murder and that he had returned to the residence of the party with his cousin to "check

on" B.K. Shortly before she was killed, and that B.K. was mad at them. The troopers' questions then became more pointed and accusatory, at one point asking "which one of you picked up the gun?" Kalmakoff admitted he had picked up the pistol and taken it outside. Troopers accused him of killing B.K. but he denied it. He said he and his cousin had taken the gun outside and shot blanks in it. At some point Kalmakoff's grandmother arrived at the city office and although the troopers saw her, they did not ask her to join the interview. After a short break, Kalmakoff asked how much longer the interview was going to continue. The troopers answered "a little bit" but did not inform him he was free to leave nor read him his Miranda rights. At one point the troopers took him outside so he could show them the dumpster he threw the cartridge case from the blanks he shot. Kalmakoff then asked if he had to go back to the city building and the trooper said: "Yeah we're not even done." When they got back to the city building, the troopers introduced themselves to Kalmakoff's grandmother who they told that they would be seizing a four-wheeler, coat, shoes, and gloves, and asked her to get Kalmakoff some different clothes. Troopers told Kalmakoff that he could return to school but they did not want him to return to his grandmother's house or his biological mother's house until troopers gave him permission. This was because the troopers planned to obtain search warrants for both locations.

The following day, the troopers interviewed Kalmakoff again. Once again Kalmakoff was transported from the school to the city building. On this occasion, the troopers began the interview by explaining to Kalmakoff that even though they had asked him to come speak with them, he was free to leave and could go back to school at any time. He said: "I could go back right now if I want to?" The trooper responded by saying he could go but asked if he wanted to talk to them so they could understand what was going on. Kalmakoff said: "I feel like going back." The troopers asked him if there was any reason he didn't want to talk to them. He said he barely remembered anything and that he sometimes blacks out. The trooper responded by saying: "maybe if we talk I could help you remember." Kalmakoff said: "I don't know, sorta scared." The trooper said: "What are you scared about?" and Kalmakoff responded "that I did it." The troopers continued to urge him to answer more questions but Kalmakoff said he was ashamed and asked if he could just go back to school. He said: "I just want to go back now and go home and talk to my grandmother." One of the troopers said okay. Another trooper said "actually Byron, I'm going to have to ask you to stay here and talk with me." It was at this point troopers first advised Kalmakoff of his Miranda rights. When asked if he understood his rights Kalmakoff nodded his head yes. The trooper then said "having these rights in mind do you wish to talk to me now?" Kalmakoff shook his head no. The trooper responded by telling him he could have a parent or guardian present and tried to convince him to talk to them. Kalmakoff again indicated that he wanted to remain silent. Troopers told Kalmakoff that they were going to describe the progress of their investigation and that he should let them know if they said something that made him want to talk. One of the troopers initiated contact with Kalmakoff by stating: "Would you like to answer questions from me, even though you already told us before you didn't want to?" Kalmakoff replied: "I don't really feel like answering questions." At this point the troopers ceased

questioning. During these two interviews Kalmakoff had admitted to consuming alcohol and removing the pistol from the house and using it to shoot blanks.

Two more interviews were conducted by troopers during which time Kalmakoff admitted to killing B.K. and then having sex with her.

ISSUE:

Did the Miranda violations in the first and second interviews violate Kalmakoff's right to remain silent so that the third and fourth interviews were tainted?

Held. Yes. The accused must be adequately and effectively apprised of his rights and the exercise of these rights must be fully honored; his exercise of his right to remain silent was ignored. These violations tainted the statements that Kalmakoff made in the third and fourth interviews.

REASONING:

1. During the first half of the first interview, Kalmakoff made three highly significant admissions that may have influenced his later decision to confess in the third interview: (1) that he was drinking on the night of the murder; (2) that he and his cousin found the murder weapon in the house where the victim was sleeping and took it with them; and (3) that he and his cousin returned to "check on" the victim several times and that the victim became angry with him.
2. A criminal suspect's right to remain silent in the face of police interrogation represents one of the most fundamental aspects of our constitutional jurisprudence while the core protection is a prohibition on compelling a defendant to testify against himself at trial, the privilege against self-incrimination is also enforceable in any setting where a suspect is subject to custodian police interrogation.
3. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.
4. The Miranda court described custodian interrogation as questioning indicated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.
5. There are three categories of facts that are relevant to the custody determination: (1) "facts pertaining to events before the interrogation, particularly whether the defendant came to the place of questioning completely on his own, in response to a police request, or was escorted by police officers"; (2) "facts in trinsic to the interrogation, "such as when and where it occurred, how long it lasted, how many officers were present, what the officers and defendant said and did, whether there were physical restraints, drawn weapons, or guards stationed at the door, and whether the defendant was being questioned as a suspect or witness"; and (3) post interrogation events, particularly whether the defendant "left freely, was detained, or was arrested."

6. Kalmakoff was in custody throughout his first interview, although he was not formerly arrested, his freedom of movement was restrained in such a way that a reasonable person in his position would not have felt free to leave the interview or break off questioning. The fact that a student was directed by school authorities to leave class to speak with law enforcement officers is a relevant fact "pertaining to events before the interrogation" that may, depending on the individual circumstances, support a finding of Miranda custody.
7. Although there is no indication that the subjective intent of the troopers was to violate Kalmakoff's rights, the misconduct that occurred in this case was flagrant. The reality is that by the time of the third interview, Kalmakoff had been subjected to a pattern of violations: the failure to administer Miranda warnings at the first interview; the failure to properly administer the warnings at the beginning of the second interview; the refusal to honor his request to leave the second interview before the warnings were administered; and failure to honor his invocation of his constitutional right to silence after the warnings were given.

NOTES:

As indicated above, the Alaska Supreme Court has reversed the Alaska Court of Appeals (see Bulletin 334) decision in this opinion. The opinion itself is 46 pages and contains 113 footnotes. You should also review Bulletin 334.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 356 numerically under Section R of the manual.