



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 171
August 3, 1992

IMMUNITY INEVITABLE DISCOVERY/INDEPENDENT SOURCE

Reference: Joseph J. Hazelwood
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1232
P.2d
July 10, 1991

FACTS:

Shortly after midnight on March 24, 1989, the Exxon Valdez tanker ran aground on Bligh Reef spilling eleven-million gallons of oil into Prince William Sound. At the time of the grounding, Third Mate Gregory Cousins was at the helm. Hazelwood, Master of the vessel, was immediately summoned to the bridge. He had been in his quarters at the time of the incident.

About twenty minutes after the grounding, Hazelwood contacted the U.S. Coast Guard, Valdez, by radio and reported as follows: "...We've fetched up, hard aground north of Goose Island off Bligh Reef...leaking some oil...so you're notified." (emphasis added)

An investigation, which involved many branches of Federal (USCG, FBI, DOJ, etc.) and State (AST, AG, DA, DEC, etc.) governments commenced as a result of his call. Hazelwood was ultimately charged with three misdemeanors: (1) reckless endangerment, (2) operating a watercraft while intoxicated, and (3) negligent discharge of oil. Hazelwood was only convicted of the third misdemeanor charge--negligent discharge of oil.

He appealed his conviction alleging he was granted immunity from prosecution by Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321(b(5)), because he reported the spill. This Act states, in part:

"Notification received pursuant to this paragraph or information obtained by exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement." (emphasis added)

The State, on the other hand, argued that Hazelwood should not be granted immunity because (1) the spill would have been discovered by an independent source, or (2) the inevitable discovery doctrine should apply.

ISSUE:

Is Hazelwood entitled to immunity from prosecution by Federal Statute?

HELD: Yes.

REASONING:

1. Under the independent source rule, "once immunity is shown, the prosecutor has the burden of demonstrating that its use of the immunized testimony has not tainted any aspect of the case." To meet its burden, "the State must prove that (its) ...evidence was developed or obtained from sources or by means entirely independent of and unrelated to the earlier compelled testimony." (emphasis added)

2. A grant of immunity is essentially a contract in which the government bargains for information in return for an assurance of future protection.

3. Having gained its evidence from exploitation of information it obtained from Hazelwood by a promise of immunity, the State should not be free to renege merely because, in retrospect, the promise appears to have been unnecessary.

4. Applying the inevitable discovery doctrine in this context would also run afoul of Congress' determination that public policy justifies the granting of immunity in cases such as this (immediately reporting spills to enable clean-up).

NOTES:

The Court of Appeals concluded that Hazelwood's immediate reporting of the incident granted him immunity as a matter of law. It was his initial report that generated subsequent investigations.

Review of Warden v. Williams, Legal Bulletin No. 85, is recommended--the U.S. Supreme Court adopted the inevitable discovery doctrine in this "Christian burial case" involving

photographs of a child's body obtained as a result of an illegal confession; because police were conducting a search for the body at the time the confession was given, the Court ruled police would have "inevitably" discovered the body without the use of the confession.

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