



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 104
May 3, 1986

KNOWING INTELLIGENT MIRANDA WAIVER

Reference: John Moran (Rhode Island)
v.
Brian K. Burbine

U. S. Supreme Court
~~No. 84-1485~~ 475 US
~~36 CrL 3182~~
March 10, 1986

FACTS:

Burbine was arrested with two other subjects by the Cranston Police Department for burglary. During their investigation, the police developed information suggesting that he might be responsible for the murder of a woman which occurred several months earlier in the city of Providence. The Providence Police Department was contacted and three of their officers arrived in Cranston about an hour later, the time being approximately 7:00 p.m.

In the meantime, Burbine's sister called the Public Defender's office and attempted to contact an attorney, who was representing Burbine in another matter, to request legal assistance for him in this current case. At 8:15 p.m., a lawyer from the Public Defender Agency contacted the Cranston Police Department. When told that Burbine had been arrested, the lawyer stated that she would act as Burbine's attorney, if they were going to question him or put him in a lineup. The police informed the attorney that Burbine would not be questioned further until the following day. The attorney was not advised that Burbine was a suspect in a homicide or that he was being questioned by the Providence police. The police did not inform Burbine of the call and he was unaware of his sister's efforts to retain counsel.

A series of three interviews were conducted with Burbine after the lawyer had called. On each of these occasions, Burbine signed written waivers acknowledging his Miranda rights. During the course of the evening, Burbine was left in a room where he had access to a telephone, which he apparently chose not to use.

Burbine signed three written statements fully admitting to the murder.

ISSUE:

Must a pre-arraignment (no formal charges) confession preceded by an otherwise valid waiver be suppressed either because (1) the police misinformed an inquiring attorney about their plans concerning the suspect, or (2) they failed to inform the suspect of the attorney's efforts to reach him?

HELD: No.

REASONING:

1. Police failure to inform Burbine of the attorney's telephone call did not deprive him of information essential to his ability to knowingly waive his Fifth Amendment rights to remain silent and to have counsel present.
2. Events occurring outside of a suspect's presence and entirely unknown to him

can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right.

3. The level of police culpability, whether intentional or inadvertent, in failing to inform Burbine of the telephone call has no bearing on the validity of the waivers.

4. Miranda's reach will not be extended so as to require the reversal of a conviction if the police are less than forthright in their dealings with an attorney or if they fail to tell a suspect of an attorney's unilateral efforts to contact him.

5. The conduct of the police did not violate Burbine's Sixth Amendment right to counsel.

6. Burbine's voluntary decision to speak was made with full awareness and comprehension of all the information Miranda requires the police to convey; the waivers were valid.

NOTES:

This case was decided on the United States Constitution. The Alaska court, as they had done in the past, may adopt different requirements for the police based on our constitution or interpretation of statutes and criminal rules.

The court, in this case, first determined that the police gave a proper Miranda warning which was followed by a knowing and intelligent waiver. The court concluded that these constitutional rights are guaranteed to individuals who can make individual decisions to waive them, so long as they understand the consequences.

The following cases are recommended for review:

Edwards v. Arizona, Legal Bulletin No. 48--defendant, in custody, did not make knowing and intelligent waiver.

Alili v. State, Legal Bulletin No. 77--defendant was given proper warning, but police failed to obtain proper waiver.

Depp v. State, Legal Bulletin No. 87--defendant, not in custody, contacted his attorney and talked to police in spite of attorney's advice not to; his statements were admitted because he made a voluntary waiver.