





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 294

March 8, 2005

CONFESSION FROM EXPLOITATION OF AN ILLEGAL ARREST

Reference: Robert Kaupp United States Supreme Court

v. 538 U.S. (2003)

Texas May 5, 2003

FACTS:

While investigating the disappearance of a 14-year-old girl, police learned she had a sexual relationship with her 19-year-old half brother. Police learned the missing girl had been in the company of her half brother and 17-year-old Kaupp on the day she disappeared. The half brother and Kaupp were questioned; both denied knowledge of her disappearance. Kaupp was permitted to leave police headquarters. The half brother remained there, took and failed three polygraph examinations, and admitted he had killed the victim. He implicated Kaupp in the girl's death and took police to a drainage ditch where her body was recovered. Police tried, but failed, to get a warrant to take Kaupp into custody for questioning.

Around 3:00 a.m., six police officers went to Kaupp's residence. After Kaupp's father let the officers into the house, they went to Kaupp's bedroom, awakened him with a flashlight, identified themselves as police, and said, "We need to go and talk." Kaupp said, "Okay." Kaupp was handcuffed and led, shoeless and dressed only in boxer shorts and a T-shirt, out of his house and into a patrol car. This seizure took place on January 27. On the way to the police station, the officers stopped where the victim's body had been found. The officers then transported Kaupp to the police station, took him to an interview room, removed the handcuffs, and advised him of his Miranda

rights. After first denying any involvement in the homicide, he later admitted having "some part in the crime."

The officers later testified that they "routinely" use handcuffs for safety purposes when transporting individuals.

ISSUE:

Did police in this case violate the Fourth Amendment rule that a confession obtained by exploitation of an illegal arrest may not be used against a criminal defendant?

<u>HELD:</u> Yes--he was arrested before he was questioned and the State did not claim that police had probable cause to detain him.

REASONING:

- 1. Although certain seizures may be justified on something less than probable cause--like a <u>Terry</u> stop, the U. S. Supreme Court has never sustained against Fourth Amendment challenge the <u>involuntary removal</u> of a suspect from his home to a police station for investigative purposes...absent probable cause or judicial authorization.
- $\underline{2.}$ Kaupp's "okay" in response to police is not consent. There is no reason to think Kaupp's answer was anything more than a mere submission to a claim of lawful authority.
- <u>3.</u> It cannot seriously be suggested that, when detectives began to question Kaupp, a <u>reasonable person</u> in this situation (see <u>Dunaway v. NY</u>, <u>Legal Bulletin No.33</u>) would have thought he was sitting in the interview room as a matter of choice, free to change his mind and go home.
- $\underline{4.}$ Stressing the officers' motivation of self-protection by routinely handcuffing individuals they transport does not indicate cooperation from the transported person.

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