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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 172  
September 28, 1992

VOLUNTEERED STATEMENT  
FAILURE TO TAPE RECORD STATEMENT

Reference: Wayne E. George  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1245  
P.2d  
August 28, 1992

FACTS:

On July 21, 1989, members of the Alaska State Trooper Tactical Diving Unit discovered the body of Michael Tarbet in Ketchikan harbor. Tarbet, a homicide victim, had been in the water about one month. The day the body was discovered, Wayne George was arrested by Officer Larry Lower in Metlakatla for a liquor violation. Officer Lower read George the Miranda warning and a short time later George said he had to talk to someone. Officer Lower called George's pastor and asked him to come to the police station; Officer Lower then left the station.

George spoke with his pastor for about fifteen minutes. After the pastor left, George asked the jailer, Officer Littlefield, if he had heard about the recovery of Tarbet's body. When Officer Littlefield said he had not heard about it, George told him that it was he (George) who pushed that person over the dock and that he wanted to speak with Officer Lower.

After verifying some details from the Troopers, Officer Lower again contacted George and read him the Miranda rights. George waived his rights and confessed to Officer Lower that he had killed Tarbet. Officer Lower did not record this interview because the tape recorder was broken.

The following day, Ketchikan police Sgt. Meyer flew to Metlakatla to interview George. After reading George his Miranda rights, he signed a waiver and again confessed. In this statement, George told Meyer that he did not push Tarbet into the water but hid him on the dock behind some pallets.

All three officers--Lower, Littlefield and Meyer--were used at George's trial. He argued their testimony should be suppressed because (1) Littlefield had not advised him of his rights, and (2) Lower failed to tape record the statement as mandated in the Donald

Stephan and Malcom Scott Harris v. State of Alaska ruling--see Legal Bulletin No. 99.

ISSUE:

Were the statements obtained legally?

HELD: Yes.

REASONING:

1. George's statements to Jailer Littlefield were volunteered and were not the product of custodial interrogation.

2. The Metlakatla police did not have a functioning tape recorder. This fact excuses non-compliance with the Stephan and Harris rule.

3. More importantly, Stephan and Harris does not prohibit admission of a defendant's custodial statement "if no testimony is presented that the statement is inaccurate or was obtained improperly, apart from violation of the [taping] rule."

NOTES:

The Metlakatla police officer, in this case, did not engage in "bad faith"--see Stephan and Harris--by not taping the statement because his recorder was broken. If such an incident were to occur in a larger city such as Anchorage or Ketchikan where other recorders are more readily available, however, the court may very well look at it with disfavor.

Review of Section P of your Alaska Legal Briefs Manual and particularly Stephan and Harris v. State, Legal Bulletin No. 99, is recommended.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 172 numerically under Section R of the manual.