



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 326

March 24, 2008

MIRANDA WARNINGS ARE REQUIRED WHEN TRAFFIC OR INVESTIGATORY STOP RIPENS INTO FULL-BLOWN CUSTODY

Reference: Michael L. Rockwell Alaska Court of Appeals
v. Opinion No. 2149
State of Alaska _____ P.3d _____
February 15, 2008

FACTS:

Anchorage police responded to a two-vehicle accident. When the first officer arrived, she observed Rockwell exit the driver's side of one of the cars and walk towards the driver of the other car involved in the accident. The two drivers started arguing and the officer separated them. When asked, Rockwell first said he had been driving, but shortly thereafter claimed he had not been driving.

A second police officer arrived and conducted all additional questioning of Rockwell. There are four interrogations involved: (1) the initial contact on the street at the scene of the accident; (2) the officer then asked Rockwell to get into the patrol car. The officer said he did this because it was cold outside. The officer conducted a pat-down search of Rockwell's clothing for weapons before Rockwell got into the car. The officer felt a hard object and removed it. The object turned out to be keys to Rockwell's car. Although the officer had informed Rockwell that he was not under arrest, the rear doors of the patrol car did not open from within. While in the police car, the officer questioned Rockwell and recorded the conversation. The officer then stepped out of the car. When the officer returned to the car (#3) he (the officer) informed Rockwell that he was going to drive him to the Dimond Mall police substation because he wanted Rockwell to perform field sobriety tests there. During the ride to the substation, the officer continued to question Rockwell. He also recorded this conversation. At the substation, the officer placed Rockwell under arrest for driving while under the influence. The officer then transported Rockwell to a different police station for breath testing. After arrival at the station for the breath testing, the officer finally (#4) advised Rockwell of his Miranda rights. Rockwell then asked for an attorney but he declined to call an attorney. The officer then asked Rockwell if he

would answer more questions. Rockwell agreed and the officer resumed his interrogation.

Rockwell argued that he was subjected to custodial interrogation in violation of his Miranda rights.

ISSUE #1. Was Rockwell in custody for purposes of Miranda during the initial contact on the street at the scene of the accident?

HELD: No - the statements he made standing on the street were not the product of custodial interrogation.

ISSUE #2. Was Rockwell in custody for purposes of Miranda during the interrogation inside the patrol car up to the point when the officer announced that he was going to transport him to the Dimond Mall police station?

HELD: Probably - we don't know because this question has been remanded for additional findings. The fact that Rockwell was "patted down" and the fact that he was locked in the police car are areas that must be addressed by the lower courts.

ISSUE #3. Was Rockwell in custody for purposes of Miranda during the continued interrogation inside the patrol car after the officer's announcement, as well as the ensuing interrogation at the two police substations until Rockwell was finally advised of his Miranda rights?

HELD: Yes - there is at least a reasonable possibility that Rockwell was in custody when he entered the patrol car.

ISSUE #4. Are any of the statements made by Rockwell after he asked for a lawyer admissible?

HELD: No - when a suspect in custody invokes his right to counsel, the police must stop all questioning until counsel is present, unless the defendant initiates the discussion. (emphasis added)

REASONING:

1. Miranda warnings are required in any situation where a person is detained or "seized" for fourth amendment purposes.
2. (Issue #1) Police officers are not required to give Miranda warnings during a traffic stop unless and until the initial stop ripens into full-blown "custody."
3. (Issue #1) The statements Rockwell made during the first portion of the interrogation - that is the statements he made when he and the officer were standing on the street at the scene of the accident - were not the product of custodial interrogation.

4. (Issue #2) When a police officer instructs - as opposed to invites - a person to sit in a patrol car, the officer is conducting a fourth amendment seizure.

5. (Issue #2) Before Rockwell got into the patrol car, the officer conducted the pat-down search and removed Rockwell's car keys from his pocket. Rockwell could not get out of the back seat of the patrol car since the rear doors of the car did not open from the inside.

6. (Issue #3) Rockwell was in custody for Miranda purposes from the time the officer told him that he was going to be transported to the police substation for testing. When the police conduct an investigative stop, they "must not require the person stopped to travel an appreciable distance."

7. The officer did not ask Rockwell to consent to be transported to the police substation. Rather, the officer simply announced to Rockwell that he would be transported. Rockwell was in custody and he should have been advised of his Miranda rights before any questioning.

8. (Issue #4) When a suspect in custody invokes his right to counsel, the police must stop all questioning until counsel is present, unless the defendant initiates the discussion (see Legal Bulletin no. 124). (emphasis added)

9. (Issue #4) The fact that Rockwell agreed to respond to further police-initiated questioning was not a valid waiver of his right to counsel.

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