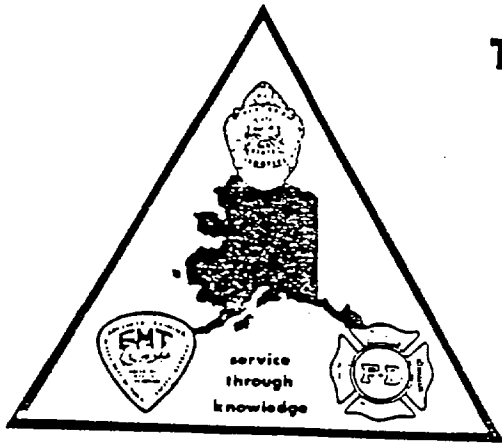


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 77
November 9, 1983



KNOWING AN INTELLIGENT WAIVER OF RIGHTS

Reference: Ilir ALILI
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 296
670 P.2d 713
October 21, 1983

FACTS:

During the course of a drug investigation, police obtained a search warrant for the residence of ALILI. When the warrant was served, ALILI was arrested. ALILI is an Albanian who immigrated to the United States from Yugoslavia; English is his second language. Prior to the interview, he told the police officer that he read English but did not understand "professional words". The officer proceeded to read ALILI the Miranda warnings without breaking after each of the rights. When the officer finished, he told ALILI that he could decide at any time to exercise his rights and not answer any questions nor make any statements. The officer then went on to explain that he did not know how it was in Albania, but in America police were required to read these rights to a person under arrest before they could talk to them. The officer then asked ALILI to sign the waiver, but he didn't want to sign it. The officer then said it wasn't necessary for ALILI to sign the waiver "if he didn't like signing things", but they could still talk. ALILI then said he would talk, but it wouldn't mean anything if he signed. The officer then interviewed ALILI; the product of the interview was used at his trial.

ISSUE:

Did ALILI make a knowing and intelligent waiver of his constitutional rights

HELD: No.

REASONING:

1. ALILI was never asked if he understood his rights and he never indicated he understood. (emphasis added)
2. He appeared to be afraid of signing something (the waiver) he did not understand which could possibly be used against him later on.
3. It appeared that the police officer explained ALILI's rights in a manner which diminished their significance and, after the explanation, did not ask if ALILI wanted to talk to him---he simply began the questioning to which ALILI made several incriminating responses.

NOTES:

To determine the voluntariness of the statement, the court looks at the "totality of the circumstances surrounding that statement." The officer in this case did not actually get a waiver from the defendant because there was nothing in the record to establish that the defendant understood his rights.

When you read a person their Miranda rights, it is suggested that you stop after each caution and ask if the person understands, as an example:

Police Officer: You have a right to remain silent.
Do you understand that right?

Suspect: Yes.

Police Officer: Anything you say can and will be used against you in a court of law.
Do you understand that right?

Suspect: Yes.

This should be done during the warning process. When you get to the waiver portion, you should continue with this same theme, for example:

Police Officer: Do you understand each of these rights I have explained to you?"

Suspect: Yes.

Police Officer: Having these rights in mind, do you wish to talk to me now?

Suspect: Yes.

Ask the defendant to read the waiver and put his initials by each of the rights indicating that he understands his rights. Whereas it is not mandatory that he signs a waiver, it is essential that the warning is given and that a waiver is obtained.

Do not blow a good case and/or confession by getting in a hurry. In this case, the warning was given, but a waiver was not obtained.