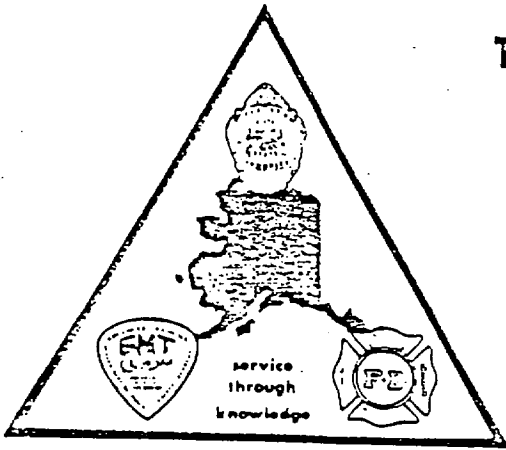


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 80
March 12, 1984



STATEMENT GIVEN TO A PROBATION OFFICER WITHOUT MIRANDA WARNINGS

Reference: Minnesota
v.
Marshall Donald MURPHY

U. S. Supreme Court
~~Opinion No. 82-827~~
~~34 CrL 9857~~
February 22, 1984

465 US 420 C

FACTS:

In 1980 MURPHY pleaded guilty to false imprisonment because of a sexual assault incident. He was sentenced to prison for a term of sixteen months, which was suspended, and three years of probation. As a result of his probation, he was required to participate in a treatment program for sexual offenders, report to his probation officer as directed and be truthful with the probation officer in all matters. MURPHY initially complied and participated in the treatment program, but the probation officer learned that he later abandoned it. A letter was written to MURPHY stating that his failure to attend a meeting with the probation officer would result in an immediate request for a warrant. MURPHY attended the meeting and continued with the sex-offender treatment program.

During one session, MURPHY told the treatment counselor that he was responsible for a rape-murder in 1974. MURPHY had been interviewed by the police twice in 1974 about that incident; apparently, he denied all knowledge of the crime and was not charged. The treatment counselor contacted MURPHY's probation officer and told her about MURPHY's admission to the prior homicide. When confronted, MURPHY became angry about what he considered to be a break in his confidences and stated that he "felt like calling a lawyer." The probation officer told him he would have to deal with that problem outside the office and she was now only concerned about the rape-murder he admitted committing. MURPHY ultimately also admitted the crime to the probation officer and she told him that she had a duty to report this information to the police. She suggested that he turn himself in to the police. He then left her office. Two days later, MURPHY called his probation officer and told her that he had been advised by counsel not to surrender himself to the police. A warrant was issued and the Grand Jury indicted MURPHY for first-degree murder. The statements made to the probation officer were used at MURPHY's trial. The Minnesota Supreme Court suppressed the statements, holding that they were obtained in violation of his Fifth Amendment right against self-incrimination. The State appealed to the United States Supreme Court.

ISSUE:

Was MURPHY's Fifth Amendment right violated when his statements to his probation officer were admitted into evidence?

HELD: No.

REASONING:

1. The general obligation to appear before his probation officer and answer questions truthfully did not in itself convert MURPHY's otherwise voluntary statements into compelled ones.

2. In the ordinary case, if a witness under compulsion to testify (in this case to the probation officer) makes disclosures instead of taking the Fifth Amendment, the government has not "compelled" him to incriminate himself. If the defendant chooses to answer, his choice is considered voluntary since he was free to claim the privilege and would suffer no penalty as the result of his decision to do so. (emphasis added)

3. It has long been recognized that the Constitution does not forbid the asking of criminative questions; nothing in prior United States Supreme Court cases suggests that the incriminating nature of a question, by itself, excuses the timely assertion of the Fifth Amendment privilege.

4. MURPHY was not in custody for purposes of receiving Miranda protection because "there was no formal arrest nor restraint on freedom of movement" to the degree associated with a formal arrest.

5. The mere fact that an investigation has focused on a suspect does not trigger the need for Miranda warnings in noncustodial settings. (emphasis added)

6. The probation officer's knowledge and intent have no bearing on the outcome of this case.

7. A probationer cannot pretend ignorance of the fact that his probation officer is also a peace officer and, as such, is allied to an extent with his fellow peace officers.

8. The probation officer is duty bound to report any wrongdoings by his probationer whenever they are brought to his attention, even if it is by communication from the probationer himself.

NOTES:

The court did not consider MURPHY to be "in custody"; therefore, Miranda warnings were not required. MURPHY voluntarily left the probation officer's office and was ultimately arrested several days later. The court likened the compelled appearance and truthfulness in all matters by MURPHY to his probation officer to that of an appearance before before a Grand Jury. If MURPHY did not want to discuss the prior homicide, he should have invoked his Fifth Amendment privilege. The court also cited Michigan v. Tucker; 417 U.S. 433, 439 (1974); quoting "at this point in our history virtually every schoolboy is familiar with the concept, if not the language, of the Fifth Amendment." Remember--the key here is that MURPHY was not in custody. He could have left the office so he was not subjected to the pressures put upon a suspect who is painfully aware of not being able to escape a persistent custodial interrogator.