

DPS TRAINING BULLETIN

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PRIOR INCONSISTENT STATEMENTS IN SEXUAL ABUSE CASE ADMITTED AS HEARSAY DOES NOT VIOLATE CONFRONTATION CLAUSE

Reference:	Stanley J. Vaska	
	v.	
	State of Alaska	

Alaska Court of Appeals Opinion No. 1890 _____P.2d____ July 25, 2003

FACTS:

Vaska was convicted of sexually abusing his three-year-old niece, T.E. Vaska's conviction was reversed and he was retried.

At the second trial, T.E. was ten years old and had just finished fourth grade. She testified that she could not remember anything that happened before the third grade.

The State's evidence that Vaska committed sexual abuse against T.E. was based primarily on T.E.'s hearsay statements from several years before identifying Vaska as the one who sexually abused her. The State presented the statements through the testimony of two witnesses--Olga Evan, who was T.E.'s mother, and Dr. Donald Burgess, who interviewed and examined T.E. for sexual abuse.

Vaska contends that T.E.'s statements were inadmissible hearsay and admitting them violated the Confrontation Clause of the United States and Alaska Constitutions.

ISSUE:

Were T.E.'s statements inadmissible hearsay and admitted in violation of the Confrontation Clause of the United States and Alaska Constitutions?

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HELD: No--statements are admissible as prior inconsistent statements.

REASONING:

<u>1.</u> The fact that the witness, though physically available, cannot recall either the underlying events that are the subject of an extra-judicial statement or previous testimony or recollect the circumstances under which the statement was given, does not have Sixth Amendment consequence.

2. The fact that T.E. could not shed any light on whether the incident about which the statement was made occurred, whether she made the statement, or the circumstances under which she made the statement would not constitute a violation of the Confrontation Clause.

NOTES:

Review of the following cases is recommended: Wassilie v. State, Legal Bulletin No. 260

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