



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 186 (161)
August 1, 1994

THE RIGHT TO COUNSEL DURING
CUSTODIAL INTERROGATION

Reference: Jacob B. Kochutin, Jr. Alaska Court of Appeals
v. Opinion No. 1350
State of Alaska _____ P.2d
June 10, 1994

FACTS:

The facts in this case are fully described in Legal Bulletin No. 161--Jacob B. Kochutin, Jr., v. State of Alaska. Review it and then indicate on your copy "CASE REVERSED BY LEGAL BULLETIN NO. 186."

The issue in this case involved a statement obtained from Kochutin regarding the sexual assault and murder of a seven-year-old boy.

Troopers first attempted to interview Kochutin in August 1985 while he was in jail on another charge not related to the murder. The attorney representing Kochutin on that charge told Troopers and the District Attorney that Kochutin did not want to talk about the murder and that he, the attorney, must be contacted prior to any interviews. About a year later, the investigating Trooper spoke with the District Attorney who indicated that enough time had elapsed to make it alright to interview Kochutin. Troopers contacted Kochutin at the jail. They conducted five interviews with him after advising him of his Mirdanda rights, which Kochutin waived. The attorney who had represented Kochutin previously was not contacted prior to nor during these interviews.

Kotchutin confessed to the assault and murder. His lawyer later argued that the confession should be suppressed because Kochutin was in "continuous custody" from the time he told Troopers and the District Attorney in 1985 that Kotchutin did not want to talk to them. The Court of Appeals agreed and the confession was suppressed.

When Legal Bulletin No. 161 was published and Sgt. Bob Stevenson, Ketchikan Detachment of Alaska State Troopers, read it, he knew the facts were "not quite right." Sgt. Stevenson was an officer

assigned to this case and he was aware that Kochutin had been released from jail and re-arrested for another charge between the interviews. Sgt. Stevenson contacted the Attorney General's office, who petitioned the Court of Appeals for a rehearing.

HELD: Confession is admissible.

REASONING:

1. Given the "now undisputed" break in custody which occurred in this case, Kochutin's August 1986 police interviews did not violate the Edwards (see Legal Bulletin No. 48) rule.

2. Given the break in custody, the Court concluded that the circumstances as a whole support the conclusion that Kochutin voluntarily waived his Miranda rights.

NOTES:

Special recognition goes out to Sgt. Stevenson! He not only recognized the error in the facts of the original court opinion, but also went that important step further by contacting the Attorney General's Office of Special Prosecutions. William H. "Mick" Hawley of the A.G.'s office is commended also for following through with the rehearing and successful arguing of the case. Relatives of the seven-year-old victim can be very proud of the efforts put forth on their behalf.

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. 186 numerically under Section R of the manual.