

People v Wilhelm

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A decision that you have likely heard about needs your careful review – it is **People v Wilhelm** reported by the Third Department on 8/24/06. (Please read the whole decision by going to www.courts.state.ny.us/reporter/decisions.htm where you can access for free the text of all NYS Appellate Division decisions) In discussing this case with some counsel around the state, several attorneys commented to me that they were not surprised about the ruling as the courts have held in the past that persons – like store employees in a shoplifting case – can not be used as “agents” of the police to obtain and then testify in court about admissions as a way around Miranda and other constitutional requirements that law enforcement must follow. However, it was still quite a shock to see the Third Department REVERSE a murder conviction based partially on the DA having presented CPS workers to testify to statements the defendant made to them. The court found that the CPS workers acted as “agents” of the law enforcement who were investigating the criminal cases and therefore the admissions were subject to Miranda rules. In this tragic murder case from Rensselaer County, the mother, who had a history of mental health problems, was suspected of killing her 4 year old son by holding his head under water. The allegations were also that she almost killed her 5 year old son in the same manner as well. Although the mother did initially make some admissions both by phone and in person, when the arresting officer read her Miranda rights, she then indicated that she would not speak further until she spoke to her attorney. Later, after she had been arraigned and was provided with counsel, two CPS workers came to the jail and asked her questions about what had happened. She made admissions to them about what she had done and that she knew what she was doing when she killed the child. These statements were testified to by the CPS workers at the criminal trial – although the DA had not given the CPL 710.30 notice required when the intention is to offer admissions made to law enforcement or to a person acting under direction or in cooperation with law enforcement.

Although there was other problematic evidence at the murder trial, for our purposes, the issue that needs discussion is the ruling on the admissibility of the statements to the CPS workers. The mother had clearly invoked her Miranda rights and had been arraigned so was at that point represented by counsel, who of course is the only person who can then waive her right to have counsel present when she is questioned. Here the court did comment that CPS workers are not “agents” of law enforcement per se but clearly were acting as agents under the facts in this particular matter. The workers were members of a multidisciplinary team whose purpose was “to enhance the prosecutorial process’ and that part of what they did on the team was to provide information of their investigations to the police and DA. Of course this behavior is not illegal – in fact it is considered good practice. However, in this particular case, the DA met with the CPS caseworkers before their interview of the mother and discussed with them their potential to be witnesses in the criminal proceedings. Thereafter that the caseworkers directly went to the jail and asked the mother questions and obtained releases which they then immediately turned over to the DA. The court was troubled by the fact that although the caseworkers

indicated that Social Services Law requires them to do a CPS investigation, interview parents and take action, they in fact took no action in Family Court but in fact turned over what they learned to the DA to assist with the criminal prosecution. Also troubling are the nature of the questions CPS asked of the mother that related to her “knowing that she was wrong” - these questions are of course not relevant to any Family Court proceeding but are very relevant to the criminal court process. The court concluded that the CPS workers were in fact acting as agents of the law enforcement and DA in interviewing the mother and providing her statements to aid in the criminal prosecution. The mandate that a CPS caseworker investigate and conduct interviews cannot overcome the mother’s constitutional rights to invoke her Miranda rights where CPS worker is also acting as an agent for law enforcement.

It is imperative that local counsel discuss this case with the local DA and that they discuss it ultimately with the interdisciplinary teams and relevant CPS staff. There is no doubt that CPS must conduct its own investigations in such matters but it is also crucial that they not be misused by the law enforcement or DA to “go” where Miranda does not permit law enforcement to go. Although the Third Department has clearly said that when the CPS investigators obtain statements in such circumstances, there are not admissible in criminal court, there is also the question of liability for violating the parent’s constitutional rights. So, counsel needs to discuss with the DA how to limit any possibility that the CPS worker will be viewed as an “agent” of law enforcement at the same time that CPS must fulfill its own mandates to investigate. There should be some discussion about the DSS’ attorney’s need to protect the district and caseworkers from liability in situations where it could be alleged that they violated the parent’s right to counsel. Districts need to consider what a proper procedure should be vis a vis any interviewing at all in cases where Miranda has been invoked or after counsel appointed in the criminal action.