



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 353

March 30, 2011

**SECOND MIRANDA WARNING NOT REQUIRED
FOR NEW CRIME AND MANDATORY RECORDING
NOT REQUIRED FOR ARRESTED PERSON WHO IS NOT
AT A PLACE OF DETENTION**

Reference:

State of Alaska
v.
John S. Amend

Alaska Court of Appeals
Opinion No. 2299
P.3d
March 11, 2011

FACTS:

Kenai Police Officer Turnage was dispatched to a convenience store in response to a shoplifting report. The dispatcher furnished the officer with a description of the suspect. When the officer arrived at the scene he saw Amend, who fit the description of the suspect; Officer Turnage knew Amend. Officer Turnage asked Amend about the shoplifting, and Amend immediately admitted that he had stolen from the store. The officer handcuffed Amend and gave Amend *Miranda* warnings. Amend stated he understood his rights and agreed to speak with the officer. Officer Turnage asked Amend for consent to search his pockets and Amend agreed. Inside Amend's jacket were five burritos and two boxes of cookies. Turnage then found seventeen and a half OxyContin tablets in Amend's pants pocket.

Amend informed the officer that he was released from jail earlier in the day, but had no money. He said he had obtained the tablets and was going to sell them to buyers he had lined up for \$120.00 a piece. Amend was charged with theft as well as felony drug offenses.

Officer Turnage testified that whereas it is his normal practice to record these conversations he did not do so on this occasion.

Amend argued successfully at the superior court level that because (1) the officer failed to remind Amend of his *Miranda* rights after the drugs were found and (2) the officer failed to record the conversation that these statements should be suppressed.

The State challenged the ruling of the Superior Court Judge.

ISSUES:

- 1) Was the officer required to remind Amend of his *Miranda* rights in light of the potential felony drug charge?

HELD: No. There was no need to remind Amend about his *Miranda* rights because he could readily understand the purpose of the officer's questions and the potential adverse consequences of answering those questions.

2) Was the officer required to record the conversation he had with Amend at the scene of the shoplifting arrest?

HELD: No. The police are obligated to record "custodial interrogations in a place of detention." (See Stephan v. State, Bulletin no. 99.)

REASONING: (both issues)

1. The Alaska Constitution does not "require the police to supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.
2. A waiver is valid as long as the suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and he was aware of the State's intention to use his statements to secure a conviction.
3. A suspect may make a valid waiver of their privilege against self-incrimination without knowing all the subjects of an interrogation in advance.
4. Police are obligated to record "custodial interrogation in places of detention, including the giving of *Miranda* rights. The unexcused failure to electronically record a custodial interrogation conducted in a place of detention violates a suspect's right to due process, under the Alaska Constitution, and . . . any statement they obtained is generally inadmissible.
5. The officer in this case was not required to record his conversation with Amend because the interrogation did not occur at a place of detention.
6. Police are not required to record or photograph all investigative procedures, even though there may be a disagreement about what happened.
7. There is no indication that the officer delayed transporting Amend to avoid the Stephan (Legal Bulletin no. 99) recording requirement. Review of Stephan v. State (Bulletin no. 99) and George v. State (Legal Bulletin no. 172) is recommended.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 353 numerically under Section R of the manual.