

# **DPS TRAINING BULLETIN**

LEGAL BULLETIN NO. 299 July 26, 2005

## MIRANDA DOES NOT APPLY TO STATEMENTS ELICITED BY A FALSE FRIEND

Reference: State of Alaska v. Barry Anthony Anderson Alaska Court of Appeals Opinion No. 1993 \_\_\_\_\_P.3d\_\_\_\_\_ July 22, 2005

### FACTS:

Anchorage police arrested Anderson for robbery. After police advised him of his <u>Miranda</u> rights, he invoked his right to counsel. Anderson remained in jail because he was unable to make bail. Police learned that Anderson might have been involved in a separate robbery/homicide. Police enlisted a friend of Anderson's, Eric Colvin, to visit Anderson in jail and try to get him to make incriminating statements about this separate criminal episode. Police obtained a <u>Glass</u> warrant and Colvin visited Anderson at the jail. Anderson was eventually indicted for this robbery/homicide, based in part on statements he made to Colvin during these jail visits.

#### ISSUE:

Was it fundamentally unfair for police to circumvent Anderson's assertion of the right to counsel by sending an informer to the jail to speak to him and try to elicit incriminating statements about the robbery/homicide?

**HELD:** No. Miranda does not apply to statements elicited by a false friend. This was not a custodial interrogation.

#### REASONING:

<u>1.</u> Rather than being confined in the same cell block with the police informer, Anderson received Colvin in the

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visitor's area of the jail. If Anderson had wanted to end a conversation with Colvin, he could have done so by simply hanging up the phone. Anderson also could have refused to even meet with Colvin.

<u>2.</u> If the interaction between the defendant and the informer or undercover agent does not qualify as a "custodial interrogation" for <u>Miranda</u> purposes, then there is no violation of the defendant's Miranda rights.

<u>3.</u> The standard for determining <u>Miranda</u> custody is objective--<u>Miranda</u> warnings are required when police interrogation is conducted under circumstances in which a "reasonable person would feel he was not free to leave and break off the questioning."

<u>4.</u> The normal interaction between a jail inmate and a jail visitor is not "custodial interrogation" for purposes of <u>Miranda</u>--and thus, even if the visitor is working for police as an informant, this tactic does not violate Miranda.

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File Legal Bulletin No. 299 numerically under Section R of the manual.