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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 188  
December 30, 1994

CUSTODIAL INTERROGATION OF PERSON  
NOT UNDER ARREST

Reference: Kathy S. Higgins  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1386  
P.2d  
December 23, 1994

FACTS:

Police obtained warrants to search Higgins' residence and to arrest Michael Van Cleve, who lived with Higgins. Eight police officers in "raid gear" executed the search warrant at 6:45 p.m. When no one answered the officer's knock on the front door, one of them kicked on the door to open it. At the same time, Higgins unlocked the door causing it to "fly open." The officers entered the residence with their weapons drawn. Higgins was at the door with her two young children. Van Cleve, who ran down the hall, was placed under arrest.

Higgins was told that she was not under arrest, but she became "progressively more hysterical." At one point, she grabbed at a police officer's hands. Higgins was told to "stand still." Higgins was asked permission to pick up one of the children. She was told she could not do that, but she could put her arm around the child. Higgins was then directed to a bedroom, at which time she was questioned by a police officer. The officer did not advise Higgins of her Miranda rights, but proceeded to tell Higgins that the police knew she was selling cocaine out of the house. The officer told Higgins that she was not under arrest and was free to leave. However at once point, when the officer left the bedroom, Higgins was told to "stand there a minute." The officer also said, "I want you to stay right here, okay?" Higgins' children were placed in another room. The officer again told Higgins that she was not under arrest "but that didn't mean charges wouldn't be filed later." The officer then interrogated Higgins for about one hour. During the interrogation, the officer told Higgins police had a lot of information about her involvement with drugs saying, "You need to think very seriously--you got a couple of very 'cute little girls here."

Higgins confessed to possession and sale of cocaine for Van Cleve. She informed police about a stash of cocaine in storage in a car. Higgins agreed to accompany the officer to the Magistrate's office in order to secure a search warrant for the car.

During the time Higgins testified, the officer asked her on record if she had been told she was not under arrest and was free to leave. Higgins confirmed the statement. Higgins was later indicted and subsequently arrested.

A hearing was held on a motion by Higgins to suppress the confession because it had been obtained in violation of Miranda. Upon conclusion of the hearing, the judge found that, under an objective standard, Higgins' interrogation had been custodial; "Under the totality of the circumstances, a reasonable person in Higgins' position would have been restrained and not free to go." The judge felt that police actions (nine officers, weapons drawn, etc.) and their words gave the impression to either cooperate or be taken into custody. The judge, who listened to a tape-recording of the event said "this whole thing is charged with the tone of control." Nevertheless, the judge went on to rule the statements admissible because Higgins had told the Magistrate that she did not believe she was in custody. Higgins appealed.

ISSUE: Was Higgins in custody for purposes of Miranda?

HELD: Yes.

REASONING:

1. For purposes of determining the existence of Miranda custody, the United States Supreme Court has adopted an objective standard-- "how a reasonable person in the suspect's position would have understood the situation."

NOTES:

The trial courts initial finding was that a "reasonable person" in Higgins' shoes would not feel free to leave. The only reason the judge did not suppress the statement was because Higgins told the Magistrate that "she understood she was free to leave." The Court of Appeals stated, using the "objective standard," Higgins was in custody for Miranda.

Review of Moss v. State, Legal Bulletin No. 166, is recommended. Review of Section P of your Legal Briefs Manual would be helpful for refreshment on "custody v. non-custody" cases involving Miranda.

NOTE:

Add this case to Section P, "Right to Counsel and Waivers during Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 188 numerically under Section R of the manual.