



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 148
September 18, 1990

NON-CUSTODIAL INTERROGATION

Reference: State of Alaska
v.
Robert E. Murray, Jr.

Alaska Court of Appeals
Opinion No. 1071
P.2d
August 24, 1990

FACTS:

Murray was suspected of sexually abusing his step-daughter. The investigating State Trooper telephoned Murray and said he wanted to interview him and Murray agreed. Several days later, the Troopers' dispatcher telephoned Murray and scheduled a time for the Trooper to contact him at his home. When the Trooper parked in the driveway, Murray came out of the house on his own initiative and entered the patrol car. He sat down in the front passenger seat and immediately began talking about the accusations.

Several minutes later, the Trooper turned on his tape recorder. Murray was informed that he was not under arrest, but the tape recording of the interview would be sent to the District Attorney for decision about any future action. Murray asked the Trooper if he should have an attorney. The Trooper assured Murray that if he wanted an attorney, he would not pressure him to complete the interview and would "back off right now." Murray responded that he did not feel guilty and did not want the situation to "go that far." He then described a sexual encounter he had with the child six years previously. The interview lasted twenty-five minutes. No Miranda warning had been given during that time. Two months later, Murray was indicted.

ISSUE:

Was Murray in custody at the time of the interview, thereby requiring the Trooper to give the Miranda warning?

HELD: No.

REASONING:

1. Custody exists when there are "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."

2. Murray was invited to participate in the interview and agreed to do so several days before the interview actually took place.

3. Although the interview occurred in the patrol car, it was Murray who selected the location. The Trooper did not use show of force or any other coercive tactic.

4. The Trooper advised Murray he would immediately terminate the interview if Murray wished to consult with an attorney.

NOTES:

Alaska has rejected the "focus of investigation" theory of custody and adopted the objective, reasonable person standard.

In 1979 when the Alaska Supreme Court decided the Hunter v. State, 590 P.2d 888, case (no Legal Bulletin), they established the "objective, reasonable person standard" for determining whether a person is in custody. Under this standard, courts examine the following three groups of facts to determine whether a reasonable person would feel free to break off police questioning and leave:

1. The manner and scope of the actual interrogation.
2. Events which took place before the interrogation, including those which explain how and why the defendant came to the place of questioning.
3. What happened after the interrogation.

Review of Section P of the Alaska Legal Briefs Manual is recommended, especially those cases involving custodial interrogation issues, such as:

Henry v. State, Legal Bulletin No. 45--non-custody in police vehicle.

LeMense v. State, Legal Bulletin No. 117--non-custody at airport.

Thompson v. State, Legal Bulletin No. 128--non-custody at police station.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P of your Contents and Text. File Legal Bulletin No. 148 under Section R of the manual.