



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 255

February 14, 2002

NON-CUSTODIAL INTERROGATION

Reference:	State of Alaska	Alaska Supreme Court
	v.	Opinion No. 5523
	Ruple Marx Smith	<u> P.2d </u>
		January 11, 2002

FACTS:

During the investigation of a forcible rape, the State Troopers published an artist's sketch of the suspect. Smith called the troopers and said that he looked like the sketch, but he was innocent.

The following day, a postal carrier told troopers that he thought a person resembling the sketch lived in a particular residence. Two troopers, Sgt. Robert Barnes and Trooper Robert Clark, responded to the residence where they made contact with Smith. Troopers noticed that Smith did resemble the sketch and he also owned a ten-speed bicycle. Bicycle tracks had been found at the rape scene and Smith's bicycle tires appeared similar.

Troopers asked Smith if they could talk to him about the "incident." Smith was "friendly" and "more than willing" to talk. Sgt. Barnes told Smith it would be easier to talk in the patrol car; it was a hot day and air-conditioning was on in the patrol vehicle. Smith agreed to this offer. Trooper Clark remained outside of the car while Sgt. Barnes conducted the interview.

Sgt. Barnes assured Smith that he was not under arrest and he was free to leave at any time. The entire interview, which was tape-recorded, took about thirty (30) minutes. Initially, Smith denied all knowledge of the rape. At one

point, Sgt. Barnes said, "...tell me the truth. And I'm not gonna arrest you." The fourth time Sgt. Barnes repeated the allegations, Smith made incriminating responses. Shortly thereafter, Smith asked for an attorney. The interview ceased at this point. Sgt. Barnes departed the area and left Trooper Clark at the scene.

Smith was allowed to go about his business. Smith contacted several friends who were in the area and at one point said he thought he might go to bed. His movements were in no way restricted by Trooper Clark. About two hours later and presumably with a warrant, Sgt. Barnes returned to the residence and Smith was arrested.

ISSUE:

Was Smith in Miranda custody during his questioning in Sgt. Barnes' patrol car?

HELD: No (reversing the Court of Appeals).

REASONING:

1. Two discrete inquiries are essential to the determination of custody: (a) the circumstances surrounding the interrogation; and (b) whether a reasonable person would feel he or she was not at liberty to terminate the interrogation and be free to leave.

2. The interview may have been less custodial if the troopers had scheduled it in advance, but the fact remains that Smith contacted the police first. Under these circumstances, a reasonable person would not have been surprised when troopers later visited for the follow-up.

3. It is undisputed that, just prior to the interview, Smith was friendly and more than willing to talk with Sgt. Barnes.

4. Additionally, Sgt. Barnes' demeanor remained calm and his tone of voice was, in the words of the trial judge, "...sympathetic...almost apologetic." The overall tone was non-custodial.

5. To summarize-- the assurance that Smith was free to leave at any time, the overall tone of the interview, and the lack of physical restraint by the troopers (such as a drawn gun, a guard at the door, a locked car door, or use of handcuffs) indicate a non-custodial interview.

NOTES:

A review of the following Legal Bulletins is recommended:

State v. Murray, Legal Bulletin No. 148

Tagala v. State, Legal Bulletin No. 158

Motta v. State, Legal Bulletin No. 197

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 255 numerically under Section R of the manual.