



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 158
June 5, 1991

NON-CUSTODIAL INTERROGATION

Reference: Eugene F. Tagala
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1134
P.2d
May 31, 1991

FACTS:

Tagala was the prime suspect in the shooting death of David Stailey. Police had information on Tagala's vehicle and observed Tagala driving it on a public street the morning after the body was discovered. The car was stopped and police conducted a pat-down search on Tagala. After police conferred among themselves, they decided not to arrest Tagala and so informed him. They did, however, ask him to come to the police station to answer some questions and he agreed. Tagala rode to the police station in the front of the police car. The interview, which lasted about two hours, was tape recorded. The police did not advise Tagala of his Miranda rights, but assured him he was "free to leave." At some point, Tagala admitted that he shot Stailey. After the interview, the police transported Tagala to the home of a friend.

Later that afternoon, the police again contacted Tagala and asked if he would come back to the police station for another interview. He agreed. On this occasion, he was advised of his Miranda rights. During this interview, the officer asked Tagala about his involvement in the sale of drugs, to which Tagala stated "...before we get into that there, I think I might have to talk to an attorney on that angle. I don't want this used against me." After this exchange, the interview continued.

ISSUE NO. 1:

Was Tagala in custody for purposes of Miranda during the first interview?

HELD: No.

ISSUE NO. 2:

Did Tagala's request for a lawyer during the second interview amount to a limited assertion of the right to counsel for his drug dealing only?

HELD: Yes.

REASONING:

1. The police used a minimal amount of force in the initial stop of the vehicle and no guns were drawn.
2. Tagala was repeatedly assured that he was not under arrest and was free to leave. He voluntarily agreed to come to the police station. He rode in the front of the police car and walked unaccompanied into the station. He was never physically restrained and he left at the end of the interview. He was not in custody during the first interview and Miranda warnings were not required.
3. A defendant may make an unambiguous but limited assertion of the right to counsel; the police then must restrict their questioning to matters outside the scope (in this case, drugs) of the assertion. (emphasis added)

NOTES:

This case reinforces the "reasonable objective person" standard to determine whether a person is in custody for purposes of Miranda; in other words, a reasonable person should feel free to leave in the same circumstances that Tagala found himself.

When Tagala requested counsel during the second interview, the court concluded that request to be limited only to his drug trafficking. Tagala still could agree to talk about the shooting.

Review of Section P of your Alaska Legal Briefs Manual is recommended, especially Hunter v. State (see Page 2 of Section P text) and Thompson v. State, Legal Bulletin No. 128.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things (Stop & Frisk)", and Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 158 numerically under Section R of the manual.