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DPS TRAINING BULLETIN

LEGAL BULLETIN NO. <u>197</u> March 6, 1996

NON-CUSTODIAL INTERVIEW BECOMES CUSTODIAL INTERROGATION

<u>Reference:</u> John L. Motta v. State of Alaska Alaska Court of Appeals Opinion No. 1455 _____P.2d_____ February 9, 1996

FACTS:

During 1992, John Motta, Peggy Skauen and her eleven-year-old son lived together in Skauen's mobile home in Anchorage. On May 28, 1992, an employee of Skauen's contacted police and reported she had been missing for about a month and foul play by Motta was suspected. Skauen's sister, Suzanne, also called police from her home in Oregon to report she was missing. Suzanne told police that Motta told her Peggy was on a drunken vacation in Washington state.

Suzanne flew to Anchorage the following day, showed up unannounced at Skauen's trailer and confronted Motta. Motta apologized for the trailer's odor, claiming Skauen's dogs had "pottied" in the house. Several days later, when Suzanne returned to the trailer, she found it had been cleaned up and smelled strongly of pine-scented cleaner. Motta told Suzanne he was trying to get rid of the doggie smell in the house.

On June 2, 1992, police detectives contacted Motta at Skauen's trailer. The detectives noticed a strong smell of pine-scented cleaner. Motta agreed to meet detectives at the police station for an interview and stated he would help them any way he could. Motta drove his vehicle to the police station, at which time he was interviewed. The officers assured Motta he was not under arrest and he would not be arrested at the conclusion of the interview. Motta repeated the story about Skauen being on vacation in Washington. He stated that she called him from Washington on several occasions. When the interview ended, Modtta left on his own.

Police obtained telephone records showing that no long-distance calls had been made to Skauen's residence during her absence. Local airlines showed no evidence that Skauen had flown to Seattle from Anchorage. On June 12, 1992, police obtained a search warrant for Skauen's home. Police contacted Motta around 11:30 a.m. at the mobile home. The officers did not tell Motta about the search warrant, but asked if he would be willing to come to the station again for another interview. Motta agreed to meet the officers and drove his own vehicle to the station.

Motta was not advised of his <u>Miranda</u> rights and was assured by officers that he was not under arrest and that he would be allowed to leave upon completion of the interview. The officers told Motta that police needed to search the trailer. Motta consented to the search and signed a waiver. Motta also gave officers a set of keys to both the trailer and his vehicle.

In the meantime, officers executing the search warrant at the trailer had discovered Skauen's body in a crawl space under the trailer. The officers decided to continue the interview without telling Motta of the discovery or advising him of his <u>Miranda</u> rights.

About three hours into the interview, the tone became confrontational. Officers told Motta the body had been discovered and they began to point out inconsistencies in his story. When officers had occasion to leave the interview room, they told him to "Just sit tight--relax." When Motta went to the lavatory, he was accompanied by one of the officers. At one point, Motta asked if he could get a pack of cigarettes from his car. One of the officers told Motta he would get the cigarettes for him. After the interview became accusatory, Motta confessed to killing Skauen and claimed he acted in self-defense.

Following the confession, officers told Motta he was not under arrest and was free to leave. Motta left the police station. He was kept under police surveillance while another officer obtained a warrant to arrest Motta for murder. The warrant was served on Motta about two hours after he left the police station. The confession was used at Motta's trial.

ISSUE:

At some point, did the interview held on June 12 become custodial for purposes of <u>miranda</u>?

HELD: Yes.

REASONING:

<u>1.</u> The test of <u>Miranda</u> custody is an objective one--a person is in custody when police say or do something "such that a reasonable

LEGAL BULLETIN NO. <u>197</u> March 6, 1996

Page 3

person would feel he was not free to leave and break off police questioning." (<u>Hunter v. State of Alaska</u>, 590 P.2d 888--no Legal Bulletin)

<u>2.</u> Custodial interrogation means questioning initiated by lawenforcement officers after a person has been taken into custody <u>or</u> <u>otherwise deprived of his freedom of action in any significant way</u>. (emphasis added)

3. An interrogation that is non-custodial at its inception may become custodial as it progresses. (<u>Hass y. State of Alaska</u>, 897 P.2d 1333--no Legal Bulletin)

<u>4.</u> Motta's interrogation of June 12 had clearly become confrontational by the time he confessed to police; accordingly, he should have been advised of his <u>Miranda</u> rights.

NOTES:

This case demonstrates that even though you may be saying the right words, such as "you are not under arrest" or "you are free to leave," those words may not match the picture. The court may feel you are not treating the suspect fairly and are attempting to circumvent the <u>Miranda</u> requirement. You may want to consider advising suspects of their <u>Miranda</u> rights if the interview is being conducted at a place of detention, such as in a police vehicle or at the police station.

The good part of this case was that Motta elected to testify at his trial and told the same story about self-defense, which the jury did not buy.

Review of Section P of your manual is recommended--especially the following:

Tagala v. State, Legal Bulletin No. 158--non-custodial interview of murder suspect at police station.

Moss v. State, Legal Bulletin No. 160--an interview of a suspect in his private residence becomes custodial.

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. 197 numerically under Section R of the manual.