

the pawnshop. They did not tell Garrison that the gun test was not conclusive.

Garrison claimed he sold the gun to Clinton the day before Clinton was killed. Garrison also stated that he went to Clinton's office on November 1, discovered he was dead, saw the gun lying near the body, and took the gun in a panic and left. Garrison explained that he took the gun because he was on probation and did not want the gun linked to him. Garrison again denied killing Clinton.

Detectives asked Garrison if he would agree to a polygraph examination; he agreed and drove himself to the police station. Before the examination, Garrison waived his Miranda rights. After the polygraph, Garrison was again interviewed and then left the station.

Garrison was subsequently indicted for two counts of tampering with evidence, one count of being a felon in possession of a firearm, first-degree murder, first-degree robbery, first-degree theft and first-degree vehicle theft. Garrison moved to suppress his January 18, 2001 statements. He argued that he was in custody and, therefore, should have been given a Miranda warning. He also argued that his statements were involuntary because his right to counsel had attached and had been violated. Garrison prevailed at the Superior Court hearing and the State appealed.

ISSUE:

Was Garrison in custody for purposes of Miranda and had his right to counsel attached?

HELD: No to both; no advisory proceedings had commenced when Garrison made his statements and police did not subject Garrison to custodial interrogation when he made the disputed statements.

REASONING:

1. Article I, Section 11 of the Alaska Constitution mirrors the Sixth Amendment of the U.S. Constitution in providing a right to counsel only in "criminal proceedings" where there is a "commencement of a specified adversarial

proceeding" that "triggers the right to counsel" (citing Thiel v. State, reference Legal Bulletin No. 125).

2. Because Garrison had not been formally charged with a crime, his right to counsel under either the Sixth Amendment or the Alaska Constitution had not attached when the police interviewed him on January 18.

3. Because Garrison was not in custody during the interview in his home and, therefore, not subject to a custodial interrogation, the Superior Court erred to the extent it found that Garrison's Fifth Amendment privilege against self-incrimination was violated.

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File Legal Bulletin No. 304 numerically under Section R of the manual.