SUPREME COURT OF THE UNITED STATES

No. 02–1684

MICHAEL YARBOROUGH, WARDEN, PETITIONER *v.* MICHAEL ALVARADO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 1, 2004]

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, dissenting.

In my view, Michael Alvarado clearly was "in custody" when the police questioned him (without *Miranda* warnings) about the murder of Francisco Castaneda. To put the question in terms of federal law's well-established legal standards: Would a "reasonable person" in Alvarado's "position" have felt he was "at liberty to terminate the interrogation and leave"? *Thompson* v. *Keohane*, 516 U. S. 99, 112 (1995); *Stansbury* v. *California* 511 U. S. 318, 325 (1994) *(per curiam)*. A court must answer this question in light of "all of the circumstances surrounding the interrogation." *Id.*, at 322. And the obvious answer here is "no."

I

A

The law in this case asks judges to apply, not arcane or complex legal directives, but ordinary common sense. Would a reasonable person in Alvarado's position have felt free simply to get up and walk out of the small room in the station house at will during his 2-hour police interrogation? I ask the reader to put himself, or herself, in Alvarado's circumstances and then answer that question: Alvarado hears from his parents that he is needed for

police questioning. His parents take him to the station. On arrival, a police officer separates him from his parents. His parents ask to come along, but the officer says they may not. App. 185–186. Another officer says, "'What do we have here; we are going to question a suspect.'" *Id.*, at 189.

The police take Alvarado to a small interrogation room, away from the station's public area. A single officer begins to question him, making clear in the process that the police have evidence that he participated in an attempted carjacking connected with a murder. When he says that he never saw any shooting, the officer suggests that he is lying, while adding that she is "giving [him] the opportunity to tell the truth" and "tak[e] care of [him]self." *Id.*, at 102, 105. Toward the end of the questioning, the officer gives him permission to take a bathroom or water break. After two hours, by which time he has admitted he was involved in the attempted theft, knew about the gun, and helped to hide it, the questioning ends.

What reasonable person in the circumstances—brought to a police station by his parents at police request, put in a small interrogation room, questioned for a solid two hours, and confronted with claims that there is strong evidence that he participated in a serious crime, could have thought to himself, "Well, anytime I want to leave I can just get up and walk out"? If the person harbored any doubts, would he still think he might be free to leave once he recalls that the police officer has just refused to let his parents remain with him during questioning? Would he still think that he, rather than the officer, controls the situation?

There is only one possible answer to these questions. A reasonable person would *not* have thought he was free simply to pick up and leave in the middle of the interrogation. I believe the California courts were clearly wrong to hold the contrary, and the Ninth Circuit was right in concluding that those state courts unreasonably applied

clearly established federal law. See 28 U. S. C. §2254(d)(1).

B

What about the majority's view that "fair-minded jurists could disagree over whether Alvarado was in custody"? *Ante*, at 10. Consider each of the facts it says "weigh against a finding" of custody:

(1) "*The police did not transport Alvarado to the station or require him to appear at a particular time.*" *Ibid.* True. His parents brought him to the station at police request. But why does that matter? The relevant question is whether Alvarado came to the station of his own free will or submitted to questioning voluntarily. Cf. *Oregon* v. *Mathiason*, 429 U. S. 492, 493–495 (1977) *(per curiam); California* v. *Beheler*, 463 U. S. 1121, 1122–1123 (1983) *(per curiam); Thompson*, *supra*, at 118 (THOMAS, J., dissenting). And the involvement of Alvarado's parents suggests *in*voluntary, not voluntary, behavior on Alvarado's part.

(2) *"Alvarado's parents remained in the lobby during the interview, suggesting that the interview would be brief. In fact, [Alvarado] and his parents were told that the interview 'was not going to be long.'"* *Ante*, at 10–11 (citation omitted). Whatever was communicated to Alvarado *before* the questioning began, the fact is that the interview was not brief, nor, after the first half hour or so, would Alvarado have expected it to be brief. And those are the relevant considerations. See *Berkemer* v. *McCarty*, 468 U. S. 420, 441 (1984).

(3) *"At the end of the interview, Alvarado went home."* *Ante*, at 11. As the majority acknowledges, our recent case law makes clear that the relevant question is how a reasonable person would have gauged his freedom to leave *during*, not *after*, the interview. See *ante*, at 9 (citing *Stansbury*, *supra*, at 325).

(4) "*During the interview, [Officer] Comstock focused on Soto's crimes rather than Alvarado's.*" *Ante*, at 11. In fact, the police officer characterized Soto as the ringleader, while making clear that she knew Alvarado had participated in the attempted carjacking during which Castaneda was killed. See App. 102–103, 109. Her questioning would have reinforced, not diminished, Alvarado's fear that he was not simply a witness, but also suspected of having been involved in a serious crime. See *Stansbury*, 511 U. S., at 325.

(5) *"[The officer did not] pressur[e] Alvarado with the threat of arrest and prosecution . . . [but instead] appealed to his interest in telling the truth and being helpful to a police officer." Ante*, at 11. This factor might be highly significant were the question one of "coercion." But it is not. The question is whether Alvarado would have felt free to terminate the interrogation and leave. In respect to that question, police politeness, while commendable, does not significantly help the majority.

(6) *"Comstock twice asked Alvarado if he wanted to take a break." Ibid.* This circumstance, emphasizing the officer's control of Alvarado's movements, makes it *less* likely, not *more* likely, that Alvarado would have thought he was free to leave at will.

The facts to which the majority points make clear what the police did *not* do, for example, come to Alvarado's house, tell him he was under arrest, handcuff him, place him in a locked cell, threaten him, or tell him explicitly that he was not free to leave. But what is important here is what the police *did* do—namely, have Alvarado's parents bring him to the station, put him with a single officer in a small room, keep his parents out, let him know that he was a suspect, and question him for two hours. These latter facts compel a single conclusion: A reasonable person in Alvarado's circumstances would *not* have felt free to terminate the interrogation and leave.

C

What about Alvarado's youth? The fact that Alvarado was 17 helps to show that he was unlikely to have felt free to ignore his parents' request to come to the station. See *Schall* v. *Martin,* 467 U. S. 253, 265 (1984) (juveniles assumed "to be subject to the control of their parents"). And a 17-year-old is more likely than, say, a 35-year-old, to take a police officer's assertion of authority to keep parents outside the room as an assertion of authority to keep their child inside as well.

The majority suggests that the law might *prevent* a judge from taking account of the fact that Alvarado was 17. See *ante*, at 13–14. I can find nothing in the law that supports that conclusion. Our cases do instruct lower courts to apply a "reasonable person" standard. But the "reasonable person" standard does not require a court to pretend that Alvarado was a 35-year-old with aging parents whose middle-aged children do what their parents ask only out of respect. Nor does it say that a court should pretend that Alvarado was the statistically determined "average person"—a working, married, 35-year-old white female with a high school degree. See U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States: 2003 (123d ed.).

Rather, the precise legal definition of "reasonable person" may, depending on legal context, appropriately account for certain personal characteristics. In negligence suits, for example, the question is what would a "reasonable person" do "'under the same or similar circumstances.'" In answering that question, courts enjoy "latitude" and may make "allowance not only for external facts, but sometimes for certain characteristics of the actor himself," including physical disability, youth, or advanced age. W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §32, pp. 174–179 (5th ed. 1984); see *id.*, at 179–181; see also Restatement (Third) of

Torts §10, Comment b, pp. 128–130 (Tent. Draft No. 1, Mar. 28, 2001) (all American jurisdictions count a person's childhood as a "relevant circumstance" in negligence determinations). This allowance makes sense in light of the tort standard's recognized purpose: deterrence. Given that purpose, why pretend that a child is an adult or that a blind man can see? See O. Holmes, The Common Law 85–89 (M. Howe ed. 1963).

In the present context, that of *Miranda*'s "in custody" inquiry, the law has introduced the concept of a "reasonable person" to avoid judicial inquiry into subjective states of mind, and to focus the inquiry instead upon objective circumstances that are known to both the officer and the suspect and that are likely relevant to the way a person would understand his situation. See *Stansbury*, *supra*, at 323–325; *Berkemer*, 468 U. S., at 442, and n. 35. This focus helps to keep *Miranda* a workable rule. See *Berkemer*, *supra*, at 430–431.

In this case, Alvarado's youth is an objective circumstance that was known to the police. It is not a special quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception. To focus on the circumstance of age in a case like this does not complicate the "in custody" inquiry. And to say that courts should ignore widely shared, objective characteristics, like age, on the ground that only a (large) *minority* of the population possesses them would produce absurd results, the present instance being a case in point. I am not surprised that the majority points to no case suggesting any such limitation. Cf. *Alvarado* v. *Hickman*, 316 F. 3d 841, 848, 851, n. 5 (CA9 2002) (case below) (listing 12 cases from 12 different jurisdictions suggesting the contrary).

Nor am I surprised that the majority makes no real argument at all explaining *why* any court would believe that the objective fact of a suspect's age could *never* be

relevant. But see *ante*, at 1 (O'CONNOR, J., concurring) ("There may be cases in which a suspect's age will be relevant to the *Miranda* 'custody' inquiry"). The majority does discuss a suspect's "history with law enforcement," *ante*, at 15—a bright red herring in the present context where Alvarado's youth (an objective fact) simply helps to show (with the help of a legal presumption) that his appearance at the police station was not voluntary. See *supra*, at 5.

II

As I have said, the law in this case is clear. This Court's cases establish that, even if the police do not tell a suspect he is under arrest, do not handcuff him, do not lock him in a cell, and do not threaten him, he may nonetheless reasonably believe he is not free to leave the place of questioning—and thus be in custody for *Miranda* purposes. See *Stansbury*, 511 U. S., at 325–326; *Berkemer*, *supra*, at 440.

Our cases also make clear that to determine how a suspect would have "gaug[ed]" his "freedom of movement," a court must carefully examine "all of the circumstances surrounding the interrogation," *Stansbury*, *supra*, at 322, 325 (internal quotation marks omitted), including, for example, how long the interrogation lasted (brief and routine or protracted?), see, *e.g.*, *Berkemer*, *supra*, at 441; how the suspect came to be questioned (voluntarily or against his will?), see, *e.g.*, *Mathiason*, 429 U. S., at 495; where the questioning took place (at a police station or in public?), see, *e.g.*, *Berkemer*, *supra*, at 438–439; and what the officer communicated to the individual during the interrogation (that he was a suspect? that he was under arrest? that he was free to leave at will?) see, *e.g.*, *Stansbury*, *supra*, at 325. In the present case, every one of these factors argues—and argues strongly—that Alvarado was in custody for *Miranda* purposes when the police ques-

tioned him.

Common sense, and an understanding of the law's basic purpose in this area, are enough to make clear that Alvarado's age—an objective, widely shared characteristic about which the police plainly knew—is also relevant to the inquiry. Cf. *Kaupp* v. *Texas*, 538 U. S. 626, 629–631 (2003) *(per curiam)*. Unless one is prepared to pretend that Alvarado is someone he is not, a middle-aged gentleman, well-versed in police practices, it seems to me clear that the California courts made a serious mistake. I agree with the Ninth Circuit's similar conclusions. Consequently, I dissent.