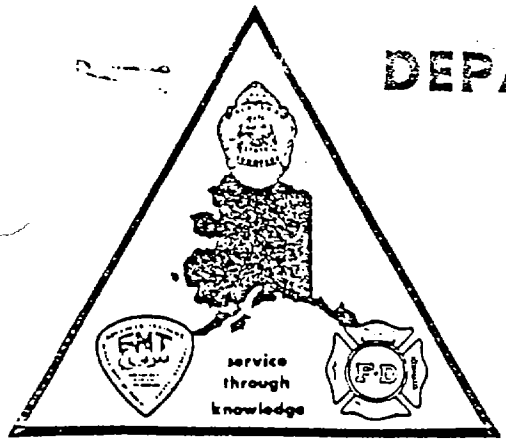

DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 45
December 23, 1980

SEIZURE OF PERSON FOR QUESTIONING AND SEIZURE OF HIS FINGERPRINTS

Reference: Daniel HENRY
v.
State of Alaska

Alaska Supreme Court
Opinion No. 2188
621 P.2d 1

FACTS:

A residential burglary occurred and a suspicious vehicle was seen leaving the area. The vehicle was later found to be owned by HENRY. Investigating officers at the scene lifted some latent fingerprints. The office assigned to the follow-up investigation put a "locate" out on HENRY. A patrol officer, on routine patrol, found HENRY. The officer contacted HENRY and advised him that another officer wanted to talk with him at the station. HENRY asked the officer "what for" and was told it had to do with a burglary. HENRY told the officer that he was not involved in any burglaries and would go with him. He got into the front seat of the police car and "kidded and joked" with the officer enroute to the police station. At the police station, the officer assigned to the burglary told HENRY he wanted to talk with him about a burglary and he (the office needed his prints, to which HENRY replied "fine".

The prints were compared with those latent fingerprints lifted at the scene and a positive match was made. HENRY was then placed under arrest and given his Miranda warnings and interviewed. Prior to the fingerprint identification, the police did not have probable cause to arrest HENRY.

ISSUE NO. 1:

Was the warrantless seizure of HENRY lawful?

HELD: Yes.

ISSUE NO. 2:

Did HENRY consent to have his fingerprints seized?

HELD: Yes.

REASONING:

1. There is no evidence to support a conclusion that, prior to the matching of HENRY's fingerprints to those found at the burglary scene, the police affirmatively deprived HENRY of his freedom of action. HENRY

was not placed under formal arrest. He rode unrestrained in the front seat of the patrol car and felt uninhibited enough to put the officer's police hat on and joke with his friends. (emphasis added)

2. He was not questioned about the burglary enroute to the police station nor upon his arrival but was merely asked to give his fingerprints.

3. HENRY voluntarily agreed to be fingerprinted. HENRY's consent was validly given.

NOTES:

On the actual seizure of HENRY by the patrol officer, the court concluded that HENRY was not in custody and therefore the initial detention was not unlawful. At the police station, HENRY volunteered to give his fingerprints.

It is up to the State to demonstrate the voluntarism of any seizure, be that of a person, fingerprints, or perhaps even photographs or handwriting exemplars. In the course of follow-up investigation, we are constantly obtaining this type of potential evidence from possible suspects. We are using fingerprints as well as handwriting for elimination purposes. We also obtain photographs, pubic hair, blood specimens and other evidence of class characteristics to attempt to prove or disprove a person's involvement in a crime. Many of these persons are not under arrest at the time we ask for the known standards. It would be beneficial for the prosecutor to have the consent in writing. Most departments have standard "consent-to-search" forms of one type or another. It would seem advisable to ask the person to sign the search-consent form for such things as photographs, hair, blood, fingerprints and handwriting. By having this consent signed, you should be in a much better position to demonstrate to the court the voluntarism on the part of the defendant.

For review, see (1) Roberts v. State (Legal Bulletin No. 5) where handwriting exemplars were taken from defendant absent his requested council, and (2) Dunaway v. New York (Legal Bulletin No. 33) where a murder suspect was seized "involuntarily" (violation of Fourth Amendment) and, even though he was given his Miranda warning (Fifth Amendment complied with), the confession was no good because of his illegal seizure.