



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 352

February 23, 2011

### COMMUNITY CARETAKER STOP UPHELD

**Reference:** Michael S. Weil Alaska Court of Appeals  
v. Opinion No. 2295  
State of Alaska P.3d  
February 18, 2011

#### **FACTS:**

At about 2:30 a.m. AST, Sgt. Erickson was driving down Kalifornsky Beach Road toward Soldotna when he noticed a four-wheeler coming down a gravel side street with a dog tied to it. The four-wheeler was about twenty feet from the road and the dog was on a twenty foot lead that was tethered to the four-wheeler. It was dark, there was traffic on the road, and Sgt. Erickson believed it would be unsafe for the dog and for any motorists on the road if the driver drove across the road. Sgt. Erickson activated his overhead lights to contact and warn the driver. When Sgt. Erickson contacted the driver, Weil, he noticed that Weil was "obviously drunk and impaired." A subsequent breath test showed Weil's blood alcohol content was .226 percent. Weil was charged with driving under the influence.

Weil argued that his stop was not supported by reasonable suspicion and therefore he was subject to an illegal seizure under the fourth amendment. The lower court upheld the stop.

#### **ISSUE:**

Did the district court error in upholding the stop as a community caretaker stop?

#### **HELD:**

No. The Trooper was justified in stopping Weil to avoid a potential threat to public safety.

#### **REASONING:**

1. A Fourth Amendment seizure may be justified without reasonable suspicion of criminal activity if the police are validly acting within their community caretaker role - that is, if the police are aware of specific circumstances supporting a reasonable belief that police assistance is required.
2. Sgt. Erickson observed Weil approaching Kalifornsky Beach Road on his four-wheeler with a dog tethered on a twenty-foot lead; it was dark out and there was traffic on the road. These circumstances

gave Sgt. Erickson reason to believe that motorists might be forced to take evasive action if Weil continued across the street.

3. If Sgt. Erickson had not immediately observed signs that Weil was intoxicated, the stop would have been brief and non-intrusive.

**NOTES:**

Review Rogers-Dwight (Legal Bulletin 193) where a vehicle yielded to a trooper who was stopping the vehicle in front of Roger-Dwight and when he contacted her to inform her she could leave he discovered she was under the influence and charged her with DUI. That seizure was upheld under the community caretaker stop as well.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 352 numerically under Section R of the manual.