ANCHORAGE POLICE DEPARTMENT

BUREAU BULLETIN

August 24, 1979

LEGAL BULLETIN NO. 26

EMERGENCY SEARCH OF VEHICLE

Reference: Anchorage, A Municipal Corporation
v.
John Wesley COOK

Alaska Supreme Court
File No. 3914
598 P.2d 939
August 17, 1979

FACTS:

A police officer was dispatched to a public parking lot to investigate a possible automobile accident. Upon arrival, the officer observed an automobile with its front bumper "hung up" on a guardrail; the engine was not running, but the headlights were on. The key was in the ignition switch in the "on" position.

COOK was laying on the front seat of the car with his feet under the steering wheel and his head toward the passenger side; he appeared to be asleep. The officer opened the car door, awakened COOK and asked him to step outside. The officer then noticed that COOK staggered as he walked. When asked, COOK stated that he was not sick. COOK explained to the officer that he had been driving his car and had swerved to avoid an accident with another vehicle and apparently hit the guardrail in the process.

The officer could smell alcohol on COOK's breath and he requested that he take further field-sobriety tests. Those that COOK agreed to do were unsatisfactory and he was subsequently arrested for driving while under the influence. COOK was convicted by a jury of the offense charged. He appealed and the Superior Court reversed the conviction because the officer did not have "probable cause" to perform the field-sobriety tests. The Municipality of Anchorage appealed to the State Supreme Court.

ISSUE:

Could the officer open the car door without benefit of a search warrant?

HELD: Yes.

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Inasmuch as the engine was not running, was COOK in physical control of the automobile?

HELD: Yes.

REASONING:

1. What is, at most, a mere inconvenience (removing COOK from the vehicle) cannot prevail when balanced against legitimate concern for the officer's safety.

2. The officer had no knowledge of COOK's identity nor condition. He could have been an armed robber, temporarily disabled by a storekeeper's bullet, and still armed and extremely dangerous. He could have been a person suffering a serious heart attack, a stroke, or some other condition such as carbon monoxide poisoning.

3. The intrusion into COOK's liberty was of little moment when weighed against society's interest in furnishing aid to persons who, in like circumstances, may in fact be in need of immediate medical attention, while at the same time guaranteeing the safety of the investigating officer.

4. The minimal intrusion was justified under the emergency exception to the warrant requirement.

5. COOK told the officer that he had been driving the vehicle and that he had come to rest on the guardrail after swerving to avoid a collision with another car. This admission, together with the other evidence in the case, provided more than sufficient evidence of the physical control necessary to support the conviction.

NOTES:

The entry into the defendant's vehicle was allowed under the "emergency" exception to the warrant requirement. The officer did not know if the defendant was ill or injured. The safety of the officer is also mentioned in this opinion, as well as quotes from Terry v. Ohio, 392 U.S. 1 (1968), or, as we know it, the "stop-and-frisk" (protection of the offic.. / exception.

Regarding the physical control issue, refer also to Jacobsen v. State, 551 P.2d 935 (Alaska 1976).

Even though this case was not a "routime traffic stop" if you do make a lawful traffic stop you can request a driver to exit his vehicle. (Pennsylvania v. Mimms, 434 U.S. 106)