



DEPARTMENT OF PUBLIC SAFETY  
TRAINING ACADEMY

LEGAL BULLETIN NO. 44  
December 8, 1980

VEHICLE SEARCH INVOLVING INVESTIGATORY STOP;  
PLAIN VIEW INCIDENT TO ARREST

Reference: Ralph K. UPTGRAFT  
v.  
State of Alaska

Alaska Supreme Court  
Opinion No. 2240  
621 P.2d 5  
December 5, 1980

FACTS:

During the early morning hours, a lone gunman entered a Qwik-Stop store and committed an armed robbery. The robber was wearing dark shoes, black pants, a gray sweatshirt and a green ski mask. After getting money, the robber demanded keys to the clerk's vehicle, a Toyota pickup with out-of-state plates. The clerk watched the robber drive from the scene and immediately notified the police. An officer already in the area drove immediately to the scene. Enroute, the officer observed a white Pontiac Tempest with three occupants approaching him. The officer drove about another mile and found the stolen Toyota which appeared to have been abandoned.

Tracks at the scene (it had been snowing) suggested a car had been driven in the same direction the Pontiac was going. The officer had not seen any other vehicles besides the Pontiac, so he put a "locate" out on it. About twenty-five minutes later, another officer discovered a vehicle matching the description of the Pontiac. With the assistance of yet another officer, this vehicle was stopped and the three occupants were ordered out.

A third officer arrived and assisted in "patting down" the three subjects. When the "pat down" was completed, the officer went to the passenger side of the vehicle and, with the aid of his flashlight, saw a gray sweatshirt, similar to the one worn by the robber, behind the driver's seat on the floor. At this time, the three subjects were standing at the rear of the vehicle facing the front with their hands in front of them. Under the sweatshirt, the officer saw what appeared to be the wooden handle of a gun. The officer removed the item (it was in a green cloth bag) and found it to be a sawed-off shotgun. The shotgun was placed in the officer's car.

A second entry was made into the vehicle which produced the remaining items of evidence including the stolen money, a green ski mask, a pistol and a license plate that was missing from the rear of the car.

ISSUE NO. 1:

Were the officers justified in stopping the Pontiac?

HELD: Yes.

ISSUE NO. 2:

Did the officer make a valid search when he removed the shotgun?

HELD: Yes.

ISSUE NO. 3:

Was the second search of the vehicle which produced the other incriminating evidence justified?

HELD: Yes.

REASONING:

1. (Issue No. 1) The Pontiac had been seen near the scene of the crime; it was the only vehicle seen by the officer until he found the stolen truck. Tire tracks in the snow indicated that an automobile had headed in the direction the Pontiac was heading. These facts were enough to infer that the lone robber had met one or more accomplices and had made his getaway in the Pontiac. The initial stop of the Pontiac was permissible.

2. (Issue No. 2) After the pat search, the officer walked to the side of the car where he could see, using his flashlight, a gray sweatshirt matching the description of that worn by the robber and the butt of a gun. These items were in plain view. (emphasis added)

3. (Issue No. 3) This second search was made as an incident to a lawful arrest. Once the officer had viewed the sweatshirt, which was similar to the one worn by the robber, and had recovered the sawed-off shotgun, probable cause to make an arrest existed. The three suspects were standing at the rear of the vehicle with the driver's door open. The area searched was limited to an area inside the car that was potentially available to the suspects. Under the circumstances, it was prudent to search and remove any other weapons from the Pontiac even if police had the suspects under control at the time the search was made. (emphasis added)

NOTES:

The court cites Coleman v. State (see Legal Bulletin No. 3) regarding the "investigative stop"; a review of that case is warranted. The court contrasts the warrantless search of this vehicle with that of a

house---see Spietz v. State (Legal Bulletin No. 18). Also, see Daygee v. State (Legal Bulletin No. 10) for another car search involving "plain view" and "incident to arrest" issues.

In another recent case (Kenneth Deal v. State of Alaska, Opinion No. 2234) involving search of a vehicle, our court held "inadvertently discovered" evidence could be used against a defendant. In this case, Deal was arrested for a traffic offense. The arresting officer knew Deal was a burglar and, while securing his vehicle for impound, several money bags were found and seized by the officer. After confronting Deal with the money bags, Deal confessed to four burglaries. The court held that the discovery of the money bags was inadvertent and could, therefore, be used against Deal.