

# **DPS TRAINING BULLETIN**

LEGAL BULLETIN NO. 298

July 26, 2005

## INVESTIGATORY STOP LEADS TO "SHOW-UP"

**Reference:** Jeremiah Jay Haag v. State of Alaska Alaska Court of Appeals Opinion No. 1996 \_\_\_\_\_P.3d\_\_\_\_\_ July 22, 2005

### FACTS:

Two masked men committed an armed home invasion to steal prescription medicine from the homeowner. The robbers did not know the victim's daughter-in-law was in an upstairs bedroom. When she heard the knock, she came down the staircase, peeked around the corner and witnessed the robbery. She then went back upstairs and crawled through a window to reach a neighbor's house and summon help.

The neighbor called 911. Relying on information from the witness, the neighbor told the 911 operator that there were "two armed black males dressed in black in the victim's apartment."

Anchorage police arrived at the scene within a minute of the call. Officer Daily saw a man dressed in black clothing running away from the apartment. The man, who was also wearing dark gloves, turned out to be Haag--a white male. Officer Daily handcuffed Haag, patted him down for weapons and took him back to the apartment complex for a show-up. Based on his dark attire and his build, the daughter-in-law witness immediately identified Haag as one of the robbers.

After delivering Haag to the police station, Officer Daily inspected the back seat of his patrol car where Haag had been riding. Officer Daily found a prescription bottle with the victim's name on it behind the seat cushion. Officers searching the area where Haag was running also found a handgun.

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There were several issues appealed in this case. For purposes of this Bulletin, only the investigative stop and subsequent show-up will be addressed.

### ISSUE:

Was this a proper investigatory seizure of Haag and was the subsequent show-up authorized?

**HELD:** Yes. The officer's actions did not amount to an arrest--it was an investigatory stop.

#### REASONING:

<u>1.</u> Police were investigating an armed robbery that had been committed only minutes before and were dealing with a suspect who ran from them. The police did not exceed the proper bounds of an investigative stop when substantial force (a drawn weapon and handcuffs) was used to detain and restrain Haag.

2. The officer's act of transporting Haag back to the apartment complex did not turn the investigative stop into an arrest.

<u>3.</u> An encounter can remain an investigative stop (rather than an arrest) even though police transport the suspect a short distance for a show-up or other identification procedure.

<u>4.</u> Haag was running from the scene, was dressed in predominately black clothing and, initially, failed to stop when directed to do so. It is true that the robbers were previously described as black men, but the witness had also reported they were wearing ski masks. Given the facts available to police, they were justified in temporarily detaining Haag so <u>he could be presented to the witness and</u> <u>either identified or excluded as one of the robbers.</u> (emphasis added)

### NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

File Legal Bulletin No. 298 numerically under Section R of the manual.