

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN # 38

July 29, 1980

WARRANTLESS SEIZURE OF HANDGUN FOR TEST FIRING

Reference: Donovan W. MCGEE
V.
State of Alaska

Alaska Supreme Court
File No. 3904
614 P.2d 800
July 25, 1980

FACTS:

Two men were driving an Alyeska truck along the Richardson Highway one evening. Another truck occupied by two males pulled them over and, by use of a gun, made the Alyeska employees exit their truck. The Alyeska employees were accused of being "scab labor" and, in general, berated.

The victims finally convinced their captors to release them and as they were walking away they heard gunshots. They turned and saw one of the men shooting at the Alyeska truck. The victims contacted troopers and gave an account as to what had happened. They also said the suspects were armed with either 9 mm or .45 automatic pistols. Troopers returned to the scene and there collected five expended .45 caliber cartridges. A registration check revealed that the defendant owned such a truck. Troopers conducted a photo lineup and one of the victims identified the defendant.

Troopers then contacted the defendant at a highway lodge and advised him that he was a suspect in this event; he was given his Miranda Warning. The defendant was asked if he owned a .45 automatic and he replied that he did. When asked by the trooper if he could see it, the defendant brought the trooper to his trailer and produced a .45 automatic and some ammunition. The trooper told the defendant that he was taking the weapon and ammunition. The defendant's gun was later checked with those collected at the scene and a match was made. The defendant was convicted and appealed several issues--this "search and seizure" being one of those issues.

ISSUE NO. 1:

Was the recovery of the automatic a result of a search?

HELD: No.

ISSUE NO. 2:

Was the warrantless seizure of the pistol unreasonable?

HELD: No.

REASONING:

1. A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way.
2. The trooper made no search. The defendant himself retrieved the weapon and handed it to the trooper.
3. The trooper did seize the weapon. Seizures are protected by the Fourth Amendment. However, since the weapon was in plain view, a warrent was not required. (emphasis added).
4. It was reasonable for the officers to infer that the defendant's gun was used to perpetrate the crime. Probable cause was present for the police to seize the pistol, in their plain view, as evidence (instrumentality) of the crime.

NOTES:

Here, the court distinguishes between a search (see Reasoning No. 1 and No. 2) and a seizure. It is always better practice to obtain written consent for a search supported by a written waiver of Miranda rights, if at all possible.