

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN # 33

April 21, 1980

INVOLUNTARY SEIZURE OF A PERSON

Reference: Irving Jerome DUNAWAY
v.
State of New York

~~432 45355 (1978)~~ U. S. Supreme Court
~~99 S. Ct. 2248 (1979)~~
442 45200 (1979) Opinion No. 78-5066
~~June 5, 1979~~

FACTS:

The owner of a pizza parlor was killed during an armed robbery. About six months after that event, an officer told the detective assigned to the case that a jail inmate had some information regarding the robbery-homicide. The detective interviewed the inmate and obtained information which suggested DUNAWAY may have been involved, but he did not learn enough to get a warrant for the arrest of DUNAWAY. The detective did put a locate out on DUNAWAY with instructions to "pick up and bring in". DUNAWAY was located by other officer and taken into custody.

DUNAWAY was not told that he was under arrest, but a police officer testified that he would have been physically restrained if he had attempted to leave. DUNAWAY was transported to police headquarters where he was interviewed. Before the interview took place, he was given Miranda warnings and waived his rights to counsel. He eventually made statements and drew sketches which incriminated him with the crime.

ISSUE:

Was the involuntary seizure of DUNAWAY permissible under the Fourth Amendment?

HELD: No.

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Can the voluntary statement made by DUNAWAY after appropriate Miranda warnings be held against him at trial?

HELD: No.

REASONING:

1. DUNAWAY was seized for Fourth Amendment purposes when he was arrested and taken to the police station for questioning; this seizure without probable cause violated the Fourth Amendment.

2. This case does not involve a situation where the defendant voluntarily appeared at police headquarters in response to a request of the police (emphasis added). He was never informed that he was free to go.

3. Investigatory seizures would subject unlimited numbers of innocent persons to harassment and ignominy incident to involuntary detention. Seizures are "reasonable" only if supported by probable cause.

4. To admit confessions in such a case would allow law-enforcement officers to violate the Fourth Amendment with impunity, safe in the knowledge that they could wash their hands in the "procedural safeguards" (Miranda warning) of the Fifth.

NOTES:

Here is a classic "fruits of the poison tree doctrine" case. The police violated the defendant's Fourth Amendment right when they took him into custody without probable cause or his consent. Even though he was given appropriate warnings under Miranda (Fifth Amendment), his confession had to be suppressed because of his illegal seizure.

Under a similar set of facts, an Anchorage Superior Court judge recently suppressed the confession of a murder defendant which resulted in his case being dismissed.

You cannot bring someone in against his will unless you have probable cause to arrest him. Remember---mere suspicion is not sufficient. If the suspect voluntarily and without coercion talks to the police either at the scene of contact or at police headquarters, you then have a different situation (see Oregon v. Mathiason, 429 U.S. 492).

If a suspect agrees to accompany you to the police vehicle or station for questioning, you must establish that he did so voluntarily. This is a warrantless seizure of the person under the "consent" exception to the warrant requirement.