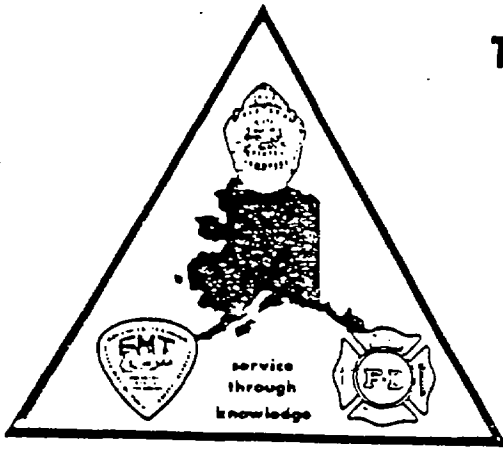


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 92
May 1, 1985



INVOLUNTARY SEIZURE OF A PERSON

Reference: Peter P. LINDSAY
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 458
698 P.2d 659
April 19, 1985

FACTS:

Police officers received a tip that LINDSAY was in possession of some stolen furs. The furs were supposed to be at his residence. About 2:30 a.m., the officers went to the BISHOP residence where they located LINDSAY. The officers did not have probable cause to arrest LINDSAY, but he agreed to accompany them to their office. LINDSAY later testified that he was told "in a commanding tone" to get into the police car when they left the BISHOP residence (his own vehicle was in the driveway). He was neither told he was under arrest nor told he was free to leave.

At the police station, LINDSAY was questioned about the furs and initially denied all knowledge of them. After about an hour, he signed a consent form to search his residence. LINDSAY then admitted to knowing where the furs were located and was subsequently advised of his Miranda rights. LINDSAY gave a taped statement surrounding his involvement in the theft. The furs were recovered and LINDSAY was transported back to the BISHOP residence. During the interview, BISHOP had attempted to talk with LINDSAY but was told he could not do so. While taping the statement, the officers told LINDSAY he would not be arrested.

LINDSAY argued that his seizure was a violation of his constitutional rights and all evidence obtained as a result of the seizure should be suppressed. The State argued that LINDSAY was not in custody and his presence in the interrogation room was voluntary.

ISSUE:

Was the evidence obtained as a result of an unlawful arrest?

HELD: Yes.

REASONING:

1. LINDSAY's detention exceeded the limits of an investigative detention. He was unlawfully (no probable cause) arrested.

2. His consent to the search of his property and the evidence seized during that search are the "fruits" of that "poisonous tree."

NOTES:

You should review the following cases:

Dunaway v. N.Y. (Legal Bulletin No. 33) where police picked up Dunaway and brought him to the police station to interview him regarding a homicide. Even though they gave him his Miranda warning at the police station, the court ruled that absent consent they did not have probable cause to arrest him and his seizure violated the Fourth Amendment; his subsequent confession was held invalid.

Henry v. State (Legal Bulletin No. 45) where warrantless seizure of a person and his fingerprints was upheld as voluntary.

Unger and Crothers v. State (Legal Bulletin No. 53) where suspects were seized illegally and, even though they waived their Miranda rights, their confessions were suppressed because of the illegal seizure.

Waring v. State (Legal Bulletin No. 76) where suspect was required to sit in a police vehicle; he subsequently gave a statement. The court suppressed his statement because of the "show of authority" by instructing the suspect to sit in the police car.