



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 331
May 14, 2008

SEARCH OF VEHICLES' GLOVE COMPARTMENT
UPHELD AS INCIDENT TO ARREST

Reference: Duley E. Lyons Alaska Court of Appeals
v. Opinion No. 2167
State of Alaska _____ P.3d _____
May 2, 2008

FACTS:

Jolena Porrata called police to report that her former husband, Lyons, who had recently been released from prison, had called her making threats. He said: "I got you and your husband." She also informed police that she had checked a storage area she shared with Lyons to see if his handgun was still stored there in his suitcase and discovered that the handgun was gone.

While interviewing Porrata, Lyons called and said he was coming over. Police stationed themselves outside the apartment and watched Lyons drive into the parking lot of the apartment complex. Police contacted Lyons and told him to get out of the vehicle, and based on his threat against Porrata, arrested him for assault. One of the officers searched the vehicle and found a handgun in the glove box. He was charged with misconduct involving weapons in the third degree and for being a convicted felon in possession of a firearm.

Lyons appealed his conviction arguing that the search of the glove box was illegal. He argued the search exceeded the scope of a search incident to arrest because he was already outside the vehicle and had closed and purportedly locked the car doors when he was arrested. He also argued that the police had no reason to believe his glove box contained a weapon or evidence of the assault.

ISSUE:

Were the police authorized to search the glove box as an incident to arrest?

HELD: Yes - - the vehicle's glove box was immediately associated with Lyons person.

REASONING:

1. The police may search a person incident to an arrest without a warrant. The scope of a warrantless search incident to arrest is limited to "a search of the arrestee's person and the area 'within his immediate control.'" (Emphasis added)

2. A glove box has a functional utility similar to a compartment in a center console.

3. The police are authorized to search an unlocked glove box incident to a driver's arrest if the driver is arrested in the vehicle or immediately upon exiting the vehicle.

NOTE:

Review Crawford v. State, Legal Bulletin No. 279, where the Court of Appeals (and later affirmed by the State Supreme Court) upheld the search of a center console as incident to arrest. Three other cases should be reviewed: (1) Dunbar v. State, Legal Bulletin No. 134, where the Court of Appeals upheld the search of a glove box and seizure of a weapon as an incident to investigative stop; and (2) Thornton v. U.S., Legal Bulletin No. 280, where the U.S. Supreme Court held the search of a vehicle as incident to arrest applies to "recent occupant" arrested outside of vehicle; and (3) Hinkel v. Anchorage, Legal Bulletin No. 41, where the Alaska Supreme Court upheld the search of a purse in the front seat of the defendant's car after she had been searched in a police car as still incident to the arrest.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 331 numerically under Section R of the manual.