

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. # 20

March 21, 1979

PLAIN VIEW SEARCH BY
"PUBLIC ACCESS"

Reference: Michael Joseph PISTRO
v.
State of Alaska

Alaska Supreme Court
File No. 3474
590 P2d 884
Opinion No. 1799
February 16, 1979

FACTS:

A stolen pickup truck was located by a police officer in the yard of one Patrick BLAIR. The officer observed that the engine was gone and the pickup had been "stripped down". BLAIR was contacted and told the officer that the truck had been given to him by three men. BLAIR furnished a description of the three men and stated that the parts missing from the truck were in a garage at a nearby residence. BLAIR showed the police officer where the garage was located. The police officer called for a "backup" unit and the two officers then proceeded to the garage.

Upon turning into the driveway, one of the officers was able to see (through the windows in the garage) two men and a truck inside. Upon approaching the garage on foot, the officer was able to see an engine hanging on a block and tackle next to the truck. The officer also observed that the two men fit the descriptions given to him by BLAIR.

Just as the officer was about to enter the garage, Boyd HODGE was opening the door to leave. At that time, the officer identified himself and advised HODGE that he was "under suspicion of grand larceny". The officer stepped into the garage and backed HODGE up against the pickup truck. He put PISTRO, the other man and the appellant in this case, against the truck and patted them both down for weapons. The officer then observed that the engine in the garage was consistent with the type of engine that would have come from the stolen pickup. The two suspects were taken to separate patrol cars and interviewed.

HODGE, after having been advised of his rights, gave a taped statement and his consent to seize the items in the garage. PISTRO was convicted and appealed on several issueshe did not believe that the officers had probable cause to arrest him and believed that the search of the garage was a result of a trespass because the officers entered "private property" (the driveway) in order to see the engine.

ISSUE:

Were the officers trespassing and searching when they were moving up the driveway?

HELD: No.

REASONING:

1. The case reveals that information from the informant (BLAIR) was sufficiently corroborated by the officer's own observations to establish probable cause for arrest.
2. The driveway was a normal means of ingress and egress impliedly open to public use by one desiring to speak to occupants of the house.
3. This is not a case of an officer leaving such a means of "public access" to spy from an area not impliedly open to the public.
4. There was no invasion of the rights to privacy; the officer could constitutionally observe what was in plain view in the garage.
5. HODGE consented to the second entry into the garage and the seizure of evidence; thus, the warrantless seizure was valid.

NOTES:

Criminal Rule 26(g) provides:

"Evidence Illegally Obtained. Evidence illegally obtained shall not be used for any purpose including the impeachment of a witness."

Whereas this rule broadens the class of individuals having standing to contest the alleged violation of constitutional rights of others, PISTRO did not challenge the "consent" given to the police by HODGE in this case.

To better understand the "public access" rule contrasted with "expectation of privacy" or the "threshold concept", a review of State v. SPIETZ (A.P.D. Legal Bulletin #18) would be advisable.

The opinion holds that the officer did have probable cause to make the arrest. An arrest for "suspicion" of an offense without probable cause is illegal and any evidence obtained as a result would be suppressed.