



DEPARTMENT OF PUBLIC SAFETY
TRAINING ACADEMY

LEGAL BULLETIN NO. 46
February 27, 1981

POST-ARREST SHOW UP

Reference: David M. VESSELL
v.
State of Alaska

Alaska Supreme Court
Opinion No. 2295
624 P.2d 275
February 20, 1981

FACTS:

During the early morning hours, a gunman entered an all-night grocery store and committed an armed robbery. The gunman's face was covered by a scarf. Immediately after the robber left, the clerk telephoned the police and furnished a description which was in turn relayed to patrolling police cars. The description furnished was of a black male, 6'1" to 6'2" in height, wearing a blue down jacket, blue jeans, boots, a maroon scarf and a knit hat. One of the officers hearing the broadcast recalled a previous incident in which a suspect of the same description had robbed one store then immediately went to a second store and robbed it. The officer decided to drive slowly to the scene of the robbery and check other all-night grocery stores enroute.

The officer observed a man matching the description enter a Qwik Stop store. The officer requested a "back-up" unit. In the meantime, the subject who entered the store had produced a handgun and motioned the clerk away from the cash register. A customer mentioned that a police car was out front. The subject then put his gun behind his back, lowered the scarf so it no longer covered his face and left the store.

Outside the store, the subject, identified as VESSELL, was stopped by police and patted down. A loaded .38 revolver was seized. VESSELL was placed under arrest and transported back to the previously robbed store. At the store, the clerk and a witness identified VESSELL as the robber. Their identification was based on the fact that VESSELL's clothing was the same as that of the man who had committed the robbery minutes before. The gun seized from VESSELL was also identified by the clerk as being "like the one" used by the robber. The police also discovered a vehicle running in the parking lot which had been operated by VESSELL. The vehicle was impounded and a search warrant was obtained which resulted in seizure of evidence from the robbery.

ISSUE:

Did the "show up" procedure of VESSELL violate due process in that it was unnecessarily suggestive and denied him the right to have counsel present?

HELD: No.

REASONING:

1. The victims of the robbery had ample opportunity to view the man who robbed them. The description given to the police immediately after the robbery was detailed and accurate. In addition, the show-up took place within minutes after the robbery had occurred. (emphasis added)

2. The presence of counsel is not mandated if the circumstances call for an immediate identification as part of a prompt and purposeful investigation.

3. The man who committed the robbery was known to be armed and presumably dangerous; thus, the police had a legitimate need to ascertain as soon as possible whether that individual was already in custody or still at large.

NOTES:

This "show up" took place in the early morning hours. Providing counsel at that late hour might have postponed a line-up until the following day. (See BLUE v. State, Legal Bulletin No. 2)

Several other issues were also addressed in this case. VESSELL claimed the search warrant issued to search his car lacked sufficient information in the affidavit for the magistrate to issue the warrant. The court said this issued was without merit.

The conduct of VESSELL in the second store (gun, scarf over his face) was brought to the attention of the jury and VESSELL claimed this too was in error. The court said the prosecutor was entitled to use this because of its "probative value" and to dispel any notion that VESSELL was merely shopping at the second store at the time he was apprehended.