



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 384

November 9, 2018

Alaska Court of Appeals

Opinion No. 2621

April 9, 2019

Reference: Jesus Alberto CARDENAS
v
State of Alaska

WARRANTLESS SEARCH OF A RIFLE CASE THAT HAD BEEN BEEN SEIZED FOR "OFFER SAFETY" RESULTS IN SUPPRESSION OF SEIZED DURING WARRANTLESS SEARCH

FACTS:

Anchorage police officer stopped CARDENAS for reckless driving. During the initial contact, the officer instructed CARDENAS to keep both of his hands on the steering wheel. The officer asked CARDENAS if he had any weapons in the car. CARDENAS replied in the affirmative, and moved his body and hands towards the back seat where there was a black fabric rifle case. The case was zipped all the way shut, and was lying on the back seat behind the passenger seat, outside of CARDENAS' immediate reach. After telling CARDENAS what he was going to do, the officer took the black soft-sided rifle case from the back seat and carried it to his patrol car.

Once in his patrol car, the officer opened the rifle case and conducted a thorough search of its contents. The case included an unloaded assault rifle and magazine of ammunition; Airsoft pellet gun; a wad of cash; a box of plastic baggies; and several plastic bags with a white powdery substance that was later determined to be cocaine.

CARDENAS was arrested. Police then obtained a warrant to search the rest of the vehicle. During that subsequent search, they seized more cocaine and some methamphetamine.

CARDENAS' attorney moved to suppress the evidence found in CARDENAS' car, arguing that the seizure and search of his rifle case was unlawful. The state argued the search was justified under the "officer safety exception to the warrant requirement."

ISSUE:

Based on these facts, did the officer have a reasonable basis to seize and subsequently search the rifle case?

HELD:

No. Even if the officer's **seizure** of the case was justified, the subsequent opening and search of the closed rifle case was not.

REASONING:

1. If the officer were entitled to take reasonable steps to ensure the rifle was not within CARDENAS' immediate reach, and these reasonable steps could include seizing the case, this could still have been accomplished without opening the closed rifle case. Here, there was nothing obviously unlawful about CARDENAS' possession of a rifle.
2. The record shows that CARDENAS, who was polite and cooperative with the officer during the stop, exhibited actions consistent with a reasonable gun owner. The gun was secured inside a closed case on the back seat and out of his immediate reach. He also informed the officer about the gun and where it was located. Furthermore, the officer did not have probable cause to believe that the gun case contained contraband or evidence of a crime.
3. Example: an officer is not entitled to open and search a person's computer case, simply because the case is immediately identifiable as containing a computer, if the person's possession of the computer is not in itself incriminating.
4. The search was not justified by officer safety concerns. It was not necessary for the officer to open the rifle case to confirm that the gun existed. There was no need to open the case to ensure that the rifle was no longer within CARDENAS' reach. The officer had already isolated CARDENAS from the rifle case by removing it from the car.

NOTES:

Remember there are two separate actions taking place in an event such as this. The first was the seizure of the gun case, which here could be justified as officer safety. The second is the search itself of the closed case. Here that search cannot be justified as "plain view"; "incident to arrest"; or "inventory" exceptions to the warrant requirement. The Alaska Supreme Court has previously ruled (see State v DANIEL, bulletin no.19) that our constitution does not allow the police to open closed containers that are within lawfully impounded vehicles pursuant to inventory process.

You must have some probable cause associated with the arrest and crime charged to justify warrantless search of a container within a vehicle. The better practice is to always make the seizure (as with smart phones), and then apply for a warrant to search.