



DPS TRAINING BULLETIN



Reference: James Henry Perozzo
v
State of Alaska

LEGAL BULLETIN NO. 390
July 12, 2021
Alaska Court of Appeals
No 2706
July 9, 2021

POLICE LACKED PROBABLE CAUSE TO ASK PASSENGER IN LAWFULLY STOPPED VEHICLE FOR IDENTIFICATION

FACTS:

Police initiated a traffic stop on a vehicle that had an obscured license plate. The rear license plate was dirty and not illuminated. The driver complied with the officer's request to produce his license and proof of insurance. The officer then asked the passenger, Perozzo, if he minded seeing his ID real quick. Perozzo asked why, stating that he was doing nothing wrong. The officer responded, "I'm just asking to see your ID, that's all." At that point, Perozzo turned over his Alaska identification card.

The officer then ran a records check on both the driver and Perozzo. The officer learned there was an outstanding warrant for Perozzo, and arrested him. During the search as incident to arrest, an empty holster was found on Perozzo's person and a handgun was observed between the driver and passenger seats. Perozzo admitted that the gun was his. He was charged with several offenses, including being a felon in possession.

During the suppression hearing, the officer testified that he requests identification from passengers as a matter of routine practice in every traffic stop. He stated if Perozzo had refused to provide his identification, he would have "let it go." The officer did not testify that he had any particularized concerns for his safety.

ISSUE:

Can a police officer request identification from a passenger and then use that identification to run a warrants check, absent any reasonable suspicion of wrongdoing by the passenger or other particularized safety concerns or circumstances indicating a legitimate need to obtain a passenger's identification?

HELD:

No. A traffic stop qualifies as a “seizure” of both drivers and any passengers. Even a passenger would conclude that an officer was “exercising control to the point that no one in the car was free to depart without permission.” (Citing Brendlin v California (see bulletin no.321)

REASONING:

1. Alaska has an explicit guarantee of privacy under our state constitution. (Art 1 §22)
2. A routine identification and warrants check on passengers, without any basis for doing so, runs the risk of “turning a routine traffic stop into a fishing expedition for criminal activity unrelated to the stop” and thus systematically infringes on Alaskans’ right to privacy.
3. When the State relies on the consent exception to the warrant requirement, the State has the burden to prove both that the defendant consented and that this consent was voluntary – acquiescence to lawful authority is not enough.

NOTES:

See McBath v State (Bulletin No.295) where police stopped a pickup truck and arrested the driver for DUI. The officer did not ask the passenger for ID and offered to call him a cab. The driver then asked the officer if it would be alright for the passenger to take his toolbox from the truck because it was being impounded. The officer agreed, but asked the passenger for his ID first. It was determined that passenger McBath had an outstanding warrant and was arrested. The court upheld this one, which was cited in Perozzo as comparison.

See Brown v State (Bulletin No. 328) where Trooper stopped car for obscured rear license plate, asked driver’s consent to search, located drugs, and arrested her. Trooper later testified that he routinely makes such stops, asks consent to search, and is usually granted permission by the driver. Court ruled that the Trooper was prohibited from requesting the search because it was unrelated to the traffic stop.

The courts have routinely ruled (Pennsylvania v Mimms; Maryland v. Wilson, Bulletin No. 214) that for safety reasons officers are allowed to order all passengers out of the vehicle, or to order them to stay in the vehicle.

Remember, in most instances (see Kolender (LA County Sheriff) v LAWSON (Bulletin No. 70) citizens are not required to provide identification to police absent justifiable reasons.