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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 138  
March 5, 1990

INVESTIGATORY SEIZURE OF PERSON  
ABSENT REASONABLE SUSPICION

Reference: Roseanne F. Ozhuwan  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1011  
P.2d  
February 9, 1990

FACTS:

One night in October, a police officer observed two vehicles (positioned driver's door to driver's door) parked near a boat launch at a campground. Even though the cars were parked legally, the officer was suspicious because he knew this particular area was frequently used by minors as a place to consume alcohol. He thought the occupants of the vehicles might be minors or might be in need of assistance.

The officer drove his patrol car to within ten yards of the parked cars. He positioned his patrol car between the vehicles and the exit, turned on his high-beam headlights and activated the overhead emergency lights. He approached the vehicles and, upon shining his flashlight into the car, saw Ozhuwan "grab something from the seat." The officer ordered Ozhuwan to "drop it." He then seized a slip of cocaine. Ozhuwan was arrested and charged with possession of cocaine. She appealed her conviction, alleging that the initial seizure was illegal.

ISSUE NO. 1:

Did an investigatory stop occur?

HELD: Yes.

ISSUE NO. 2:

Did sufficient grounds exist to justify the stop?

HELD: No.

REASONING:

1. A reasonable person lawfully parked in a public area at night would hardly feel free to leave when suddenly confronted with a police-patrol vehicle partially blocking the only exit from the area and with its high-beam headlights on and its overhead red

lights activated.

2. It has been widely recognized that an area's reputation for criminality does not, standing alone, amount to a reasonable suspicion for an investigative stop of persons within the area.

3. The mere fact that an occurrence is unusual will not support a reasonable suspicion, unless the occurrence is somehow indicative of criminality.

4. The officer observed no actual indication of any problems (both cars were legally parked) and had received no request for assistance. He saw nothing to make him believe that the occupants of the two cars needed assistance.

NOTES:

You must be able to articulate the suspicions (absent consent) which you felt justified an investigative seizure. Your "gut feeling" (see Waring) will not suffice, nor will the lack of a "reasonable suspicion" specific to the event (see Garcia).

Review of the following cases is recommended:

Coleman v. State, Legal Bulletin No. 3--investigatory stop where recent robbery led to probable cause to arrest.

Waring & Robison v. State, Legal Bulletin No. 76--"gut feeling" does not justify stop.

Anchorage v. Cook, Legal Bulletin No. 26; and Sather v. DMV, Legal Bulletin No. 135--individual observed slumped over steering wheel or lying on seat of car justifies emergency entry.

State v. Garcia, Legal Bulletin No. 116--seizure of luggage without permission or reasonable suspicion.

Allen v. State, Legal Bulletin No. 137--anonymous tip, standing alone, does not justify stopping a vehicle.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section C, page 2, and Section I, page 7, of your Contents. Also add to Section C, page 3, and Section I, page 8, of the Text. File Legal Bulletin No. 138 numerically under Section R of the manual.