

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN NO. 29

November 16, 1979

### SEARCH OF ABANDONED VEHICLE

Reference: Robert F. LUPRO  
v.  
State of Alaska

Alaska Supreme Court  
File No. 2987  
603 P.2d 468

### FACTS:

On the night of November 14, 1974, it was discovered that a pedestrian apparently had been hit by a vehicle. The pedestrian died several days later. A witness in the area had observed a "greenish or dark blue or gray" Volkswagen van driving in an erratic manner without headlights prior to the accident. A "locate" was put out for such a vehicle.

Several miles out of town, a police officer saw headlights shining up from the bottom of a steep embankment. Upon investigation, he discovered the defendant's Volkswagen lying upside down. Tire tracks at the scene indicated that the vehicle had been pushed off the road rather than having been accidentally driven over the embankment. This was corroborated by the fact that there was no evidence that anyone had been injured in that fall.

The van was impounded and taken to the police station. Several days later, the police conducted an examination of the outside of the vehicle to see whether any evidence of the accident could be found. Some fibers wedged in one of the windshield wipers were seized. The wiper was removed and additional fibers, glass particles, and other trace evidence were discovered. Subsequent laboratory analysis revealed conclusively that it was the defendant's van that had struck the victim. Other witnesses had placed the defendant and his vehicle in the area prior to the accident. The defendant was arrested, tried, and convicted. He appealed his conviction.

### ISSUE:

Was the seizure of the defendant's vehicle and subsequent warrantless search of the vehicle which produced the evidence permissible?

HELD: Yes.

### REASONING:

1. It was reasonable for the police officers who located the van to believe that it had been abandoned. The seizure of the vehicle, to be held as evidence, was legal.
2. The continued holding of the van after its initial seizure was justified under A.S. 28.35.070---this statute authorizes police to impound any vehicle which may have been involved in an accident if there is a possibility that it will be repaired and to prevent access to the vehicle by anyone except the investigating officer.

3. The windshield wiper of a motor vehicle is normally exposed to the public at large. There could thus have been no reasonable expectation of privacy in the area from which the evidence was taken (emphasis added).

4. Since the van was lawfully in possession of the police, they were entitled to inspect the exterior of the vehicle.

NOTES:

This search surrounds the seizure of evidence located on the outside of the vehicle and the initial seizure of the vehicle was from public property not a private driveway. Had there been evidence inside the vehicle or had it been necessary to enter private property, would the defendant have a reasonable expectation of privacy? If you cannot answer this question, it might be a better practice to consult the District Attorney to obtain a search warrant to search the interior of the vehicle or to enter the private property.

The "abandoned-garbage" case (SMITH v. State, 510 P.2d 793, Alaska 1973) is also mentioned in this opinion. SMITH had thrown his garbage in a dumpster which was utilized by other apartment tenants. Police seized his garbage which led to a search of his apartment for drugs; that search was upheld. SMITH had intentionally relinquished any reasonable expectation of privacy in the articles alleged to be abandoned.