



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 344

October 1, 2009

POLICE OFFICER CONDUCTED INVESTIGATIVE STOP OF PEDESTRIAN BY USING RED OVERHEAD LIGHTS

Reference: Joseph W. Cofey Alaska Court of Appeals
v. Opinion No. 2238
State of Alaska _____ P.3d _____
September 18, 2009

FACTS:

Police were dispatched to a report of a fight or disorderly conduct. The dispatcher informed the responding officer that a car containing some of the people involved in the incident had departed the scene. The responding officer saw two individuals on a street behind the residence. One of the men ran away and the other, Cofey, looked at the officer and started to walk away. The officer pulled his car ahead so Cofey was illuminated by the vehicle's headlights and then activated his overhead lights to let Cofey know he wanted to talk to him. The officer had no information that Cofey was involved in the incident, and no indication that Cofey had been a victim or a witness of any assault prior to the officer's contact. Cofey had done nothing to suggest that he was armed and dangerous.

After he had activated his lights, the officer jumped out of his car and said, "Come over here, I need to talk to you." Cofey responded "Yeah," and walked a couple of steps and stopped. Cofey then began to dig in his front jacket pockets. The officer asked Cofey several times to take his hands out of his pockets and Cofey responded "Yeah, okay, I will" but continued to dig in his pockets. The officer could see a hard object in one of Cofey's pockets, and concluded that he might be trying to find a weapon. The officer drew his weapon, and ordered Cofey to take his hands out of his pockets. Cofey was startled when he saw the officer pointing his weapon at him and threw both hands in the air. In his left hand, Cofey held a baggie containing cocaine. Cofey was arrested. The officer discovered that the hard object in Cofey's pocket was actually two cell phones.

Cofey was convicted of misconduct involving a controlled substance. Cofey argues that the cocaine evidence should have been suppressed by the trial court because the officer had stopped him illegally without reasonable suspicion.

ISSUE:

Was the investigative stop of Cofey supported by reasonable suspicion?

HELD: No - at the time the officer directed Cofey to approach his car, Cofey had done nothing to suggest that he posed a danger or that he had caused any harm.

REASONING:

1. A police officer is authorized to make an investigative stop when the officer has a reasonable suspicion that an imminent public danger exists or that serious harm to persons or property has recently occurred, and that the individual presents that danger or has caused that harm. (See Coleman v. State, Bulletin no. 3.)

2. An officer does not conduct an investigative stop "by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, or by putting some questions to him if the person is willing to listen. (See Waring v. State, Bulletin no. 76.) (emphasis added)

3. An officer's activation of his overhead lights is the "traditional hallmark of a traffic stop." (See Ozhuwan v. State, Bulletin no. 138.)

4. The officer's encounter with Cofey was an investigative stop and a reasonable person in Cofey's situation would conclude that he was not free to leave.

5. Cofey was subjected to an investigatory stop when the officer activated his overhead lights and directed Cofey to approach his patrol car. The evidence discovered during this stop should have been suppressed because the stop was not supported by reasonable suspicion.

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