



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 347

January 28, 2010

POLICE OFFICER'S HAND SIGNAL CONSTITUTES A SEIZURE UNDER ARTICLE I, SECTION 14 OF THE ALASKA CONSTITUTION

<u>Reference:</u>	<u>Anton Majaev</u>	Alaska Supreme Court
	v.	Opinion No. S-13033
	<u>State of Alaska</u>	<u>P.3d</u>
		January 22, 2010

FACTS:

Troopers responded to a gravel pit to investigate a report of an underage (drinking) party. When the trooper arrived, the young people had departed, but he observed twenty to thirty people at a turnout about a mile up the road; the group of people appeared to be in their mid-teens to mid-twenties. When the group of people saw the marked police vehicle approaching, they scattered into the woods nearby. The trooper parked his patrol vehicle about ten feet away from the driver's side door of Majaev's truck. Majaev drove away "in a hurried manner" when the trooper walked toward him. When the trooper stepped into the road to see the license plate on Majaev's truck, the truck stopped about thirty to fifty feet away from the trooper. The trooper "waved him back to talk to him." Majaev complied by backing up. Majaev rolled down his window and the trooper smelled alcohol and saw beer cans in the back of the truck. Majaev failed the field sobriety tests and was arrested for driving under the influence. At the police station, Majaev provided a breath sample that contained 0.120 alcohol content.

Majaev argued that the case should have been dismissed because he had been subject to an unlawful seizure. He lost his argument at the District Court level and also with the Alaska Court of Appeals (A-9744), who ruled that no seizure occurred. The Alaska Supreme Court agreed to accept this case. The issues addressed by the Supreme Court are: (1) did the trooper's actions constitute a seizure? and (2) was the seizure reasonable? The opinion only addresses the "seizure" issue; the issue involving the "reasonableness" has been sent back to the lower courts for disposition.

ISSUE:

Did this encounter amount to a seizure triggering constitutional protections?

HELD:

Yes - a reasonable person in Majaev's position would not have felt free to leave the scene because doing so would have violated the law (AS 28.35.182) and therefore could have subjected such a person to criminal sanctions.

REASONING:

1. The Alaska Constitution (Article I Section 14) provides broader protection than the United States Constitution in the area of search and seizure.

2. A seizure, which includes both full arrests and investigatory stops, exists only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. (emphasis added)

3. AS 28.35.182 provides:

A person commits the offense of failure to stop at the direction of a peace officer in the second degree if the person, while driving or operating a vehicle or motor vehicle or while operating an aircraft or watercraft, knowingly fails to stop as soon as practical and in a reasonably safe manner under the circumstances when requested or signaled to do so by a peace officer.

4. When the trooper signaled Majaev to return, that triggered the statutory prohibition against ignoring a peace officer. Because of the statute, the trooper's gesture was a sufficient show of authority to make a reasonable person in Majaev's position believe that he was no longer free to leave.

NOTES:

In this case, the Alaska Supreme Court ruled that a seizure did in fact occur. The court has remanded the matter to the district court to consider whether the trooper had a "reasonable suspicion" (investigative stop, etc.) to seize Majaev.

The court cited Waring v. State (see Bulletin No. 76) where police instructed the defendant to sit in a patrol car because the officer was "suspicious and thought something was wrong." The officer in the Waring case did not ask the defendant to get in the car nor did the officer articulate what his suspicions were based on.

There are a number of other cases involving the seizure of vehicles/persons, some include: Smith v. State (see Bulletin No. 277) stop of vehicle based on anonymous tip leads to DWI arrest - upheld; Beauvois v. State (see Bulletin No. 17) investigatory stop of vehicle in

area where armed robbery occurred - upheld: Castle v. State (see Bulletin No. 241) passenger from vehicle was seized without probable cause - court ruled seizure was illegal; Brendlin v. California (see Bulletin No. 321) no probable cause to stop vehicle - evidence seized from passenger must be suppressed. There are a number of other cases involving seizures of people or vehicles our courts have addressed. You should review Sections I (Investigatory Seizures) and J (Vehicle Searches) of the manual.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 347 numerically under Section R of the manual.