



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 316

November 19, 2006

POLICE HAD NO GROUNDS FOR INVESTIGATIVE STOP/SEIZURE OF A PERSON

<u>Reference:</u>	Claude J. Joseph	Alaska Court of Appeals
	v.	Opinion No. 2067
	State of Alaska	_____ P.3d _____
		October 13, 2006

FACTS:

Police responded to an anonymous 911 call that two men were walking down the street smoking "a joint." The caller furnished a description of the men and gave their current location. Responding police saw two men who fit the description standing next to a minivan and chatting with two women. The officer did not see any of the four people holding a marijuana cigarette. Nevertheless, a police officer directed the man closest to him to approach the patrol car. When the man moved towards the officer, the officer smelled a strong odor of marijuana coming from the area where the four people were standing. When the man got close to the officer, the officer told him he was investigating a complaint that two men were smoking marijuana in the area. Although the man did not physically resist, he was "on the verge" of becoming "verbally...non-compliant," so the officer decided to place the man in handcuffs for purposes of officer safety. While the officer was placing the man in handcuffs, the second man, Claude Joseph, began walking away. The officer called out for him to stop, but he continued to walk away.

At the same time, a member of the local community patrol arrived and offered to watch the first man while the officer pursued Joseph. During this pursuit, the first man, still in handcuffs, fled the scene. He was never identified.

As the officer approached Joseph and instructed him to stop, Joseph started to run away again. As the officer began to gain on Joseph, Joseph reached in his pocket and tossed a plastic baggie containing a white chalky substance about the size of a golf ball. The officer caught Joseph, handcuffed him, and placed him under arrest. The baggie was seized and found to contain twenty individually-wrapped rocks of cocaine.

Joseph argued that police had no lawful grounds to make an investigatory stop. The State argued that, even if police illegally seized Joseph, the evidence of the cocaine should not be excluded. The State cited California v. Hodari D., Legal Bulletin No. 151, as authority. This case has a similar fact situation and the U.S. Supreme Court ruled that at the time Hodari threw the drugs away he had not been physically seized by the pursuing officer and therefore the drugs were abandoned. This case was decided on the U.S. Constitution.

ISSUE:

Did police have lawful grounds for chasing Joseph--that is, lawful grounds for attempting to subject Joseph to an investigative stop?

HELD: No--the Alaska Constitution authorizes police to conduct investigative stops only if they have a reasonable suspicion that the person being stopped is committing, or has just committed, a crime.

REASONING:

1. The police officer had no reason to suspect that Joseph posed an imminent danger to anyone's safety, and no reason to suspect that Joseph had recently caused harm to any person or property. (emphasis added)

2. Even though a police officer has probable cause to believe that a person has committed a misdemeanor offense, the officer is prohibited from arresting the person for that offense unless (a) the officer has an arrest warrant, or (b) the misdemeanor is committed in the officer's presence. (emphasis added)

3. As this court stated in Castle (see Legal Bulletin No. 241), when police, whether by physical force or by show of authority, undertake to restrain the freedom of a citizen, the principles of the exclusionary rule apply equally regardless of whether police succeed in unlawfully seizing the person or merely attempt to do so.

4. The Court of Appeals, therefore, rejected the U.S. Supreme Court decision in Hodari D. (see Legal Bulletin No. 157) as inconsistent with Article I, Section 14, of the Alaska Constitution.

5. Acts of abandonment prompted by unlawful police conduct are generally considered the tainted fruit of the illegality--see Young v. State and Legal Bulletin No. 268.

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