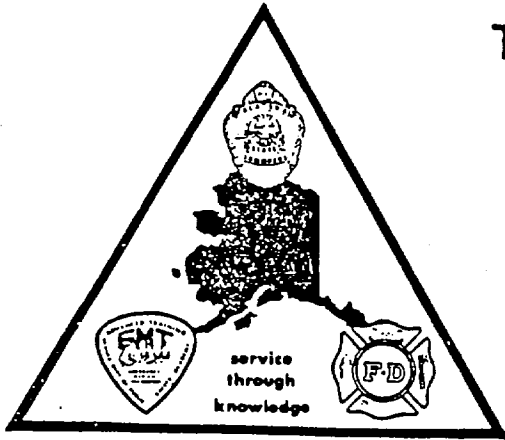


DEPARTMENT OF PUBLIC SAFETY TRAINING ACADEMY



LEGAL BULLETIN NO. 53
February 19, 1982

WARRANTLESS SEIZURE OF A PERSON FROM A PRIVATE RESIDENCE AND SUBSEQUENT CONFESSION

Reference: Matthew UNGER and
Gregory CAROTHERS
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 65
640 P.2d 151
February 11, 1982

FACTS:

A pair of armed robberies occurred within minutes of each other in two shopping center parking lots where the female victims were held up and had their purses stolen. The license number of a suspect vehicle was obtained; it was found to belong to CAROTHERS. A photo lineup was conducted and a witness selected CAROTHERS as the robber.

It wasn't until the following day that police began to look for CAROTHERS. The police had not obtained a warrant for his arrest nor did they know the identity of the second person involved. At the residence of CAROTHERS' parents, police were informed that he was probably staying with Matt UNGER. The police then went to UNGER's house where UNGER answered the door. The officer asked if CAROTHERS was in the house and UNGER said "no." The officer informed UNGER that he knew CAROTHERS was present and he may as well come out. At that time, UNGER looked away and the officer entered the residence and found CAROTHERS. CAROTHERS was placed under arrest and taken to the police station.

CAROTHERS was given his Miranda rights and then quickly confessed. When asked to contact his accomplice, he spoke on the phone with a person he referred to as "Matt." CAROTHERS told Matt of his arrest and said it appeared likely that Matt would also be identified. About this time, one of the officers present took the phone and persuaded Matt to turn himself in. UNGER was given a ride to the police station and he also confessed. From the time of CAROTHERS' arrest up to this point took one and one-half hours.

ISSUE: Did the warrantless seizure of CAROTHERS violate the Fourth Amendment?

HELD: Yes

ISSUE: Can the confession given by CAROTHERS after the illegal arrest be used against him at his trial?

HELD: No

ISSUE: Was the confession given by UNGER the result of an illegal arrest of CAROTHERS? Does UNGER have standing (legally recognizable interest) to challenge the illegal entry into his house?

HELD: Yes

REASONING:

1. UNGER had not consented to the entry of his apartment; therefore, the warrantless arrest of CAROTHERS was illegal.

2. Because CAROTHERS was seized in violation of the Fourth Amendment, his subsequent confession must be suppressed as a "fruit of the poisonous tree."

3. UNGER could contest the search of his house and can assert his claim of standing.
4. UNGER's confession followed within an hour and a half of the unlawful entry into his apartment. The confession (UNGER's) was the result of a telephone confrontation between UNGER, the police and CAROTHERS--a confrontation that resulted directly from exploitation by the police of their unlawful arrest of CAROTHERS in UNGER's home.
5. UNGER's confession was induced by CAROTHERS' illegal arrest and detention.

NOTES:

Because police violated the Fourth Amendment (illegal entry and seizure of CAROTHERS), the confessions had to be suppressed in this case even though the officers complied with the Fifth and Sixth Amendments (right to remain silent and right to counsel).

The court rejected the State's claim of "inevitable discovery." The inevitable discovery doctrine permits the State to introduce evidence that is clearly the result of an illegal search or seizure, upon a showing that the government undoubtedly would have discovered the tainted evidence by lawful means.

This opinion cites the following cases and it is advisable to review them:

1. Irving Dunaway v. New York (Legal Bulletin No. 33) where Dunaway was seized from his apartment with no probable cause to arrest and taken to police headquarters where he confessed after waiving his Miranda rights. The confession was suppressed because of his illegal seizure.
2. Theodore Payton v. New York (Legal Bulletin No. 34) where police made warrantless entry into a private residence and evidence they discovered was suppressed.

If you "ask" a person to accompany you to another location, you must be able to articulate the fact that the person did so on a volunteer basis thus waiving his Fourth Amendment right as the seizure of his person.

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