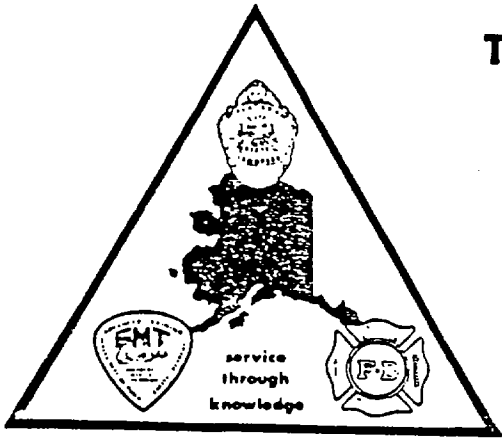


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 76
October 14, 1983



WARRANTLESS SEIZURE OF PERSON ABSENT PROBABLE CAUSE TO ARREST

Reference: Brian WARING and
Scott ROBINSON
v.
State of Alaska

Alaska Supreme Court
Opinion No. 2719
670 P.2d 357
September 9, 1983

FACTS:

While on routine patrol, a police officer observed three persons standing by a parked vehicle at a roadside turnoff. Before stopping to investigate, the officer called in the license number to the dispatcher and was told the car had not been reported stolen. While approaching the vehicle, the officer observed two of the persons get down underneath the car; they appeared to be inspecting it. The officer asked the person who was standing, Randy ROBINSON, what the problem was and ROBINSON said they were having a problem with the tie-rods on the car but they did not need assistance. The officer requested and was given identification. The officer then instructed Randy ROBINSON to get into the police car at which time he questioned him about the identity of the other two and why they were stopped at that location. Record checks on the three men were conducted and no warrants were outstanding. While talking to ROBINSON, the officer became suspicious and felt "something was wrong" because the other two were whispering and appeared to be looking toward the woods. On a lucky guess, the officer asked Randy ROBINSON who the other people were in the woods. At first he hesitated, but then he said that Brian WARING, who owned the car, and Scott ROBINSON were in the woods at their cabin. The officer went to the cabin and saw WARING and ROBINSON outside the cabin. One of them was holding a gun. The officer seized the rifle and found two more hidden in the woods. He called the serial numbers into his office and they were all reported stolen. All five subjects were taken into the police station. After being confronted with the evidence, one of the juvenile subjects confessed. Shortly thereafter, ROBINSON and WARING both confessed and the remaining two subjects were released from custody.

ISSUE:

Did the initial contact between the officer and Randy ROBINSON constitute an unreasonable seizure?

HELD: Yes.

REASONING:

1. In Terry v. Ohio, the United States Supreme Court noted that "a seizure occurs when the officer, by means of physical force or show of authority,

has in some way restrained the liberty of a citizen..." (emphasis added)

2. When the officer instructed ROBINSON to sit in the patrol car, he was conducting himself in a way a reasonable person "would view as threatening or offensive even if coming from another private citizen."

3. Upon such an assertion of authority, it would have been reasonable for Randy ROBINSON to conclude that he was not free to disobey the officer's instructions and go "about his business".

4. Temporary detention for questioning is permitted only when (a) the police officer has an actual suspicion that "imminent public danger exists or serious harm to persons or property has recently occurred", and (b) the suspicion is reasonable.

5. By taking Randy ROBINSON into the police car and questioning him there when the officer had no articulable reason to suspect that anything was wrong was too great an intrusion on his freedom.

NOTES:

The record in this case suggests that the officer was on a "fishing expedition" which ultimately led him to solve a crime. You cannot, absent articulable facts, embark on an investigative action in hopes that something might turn up. The thing forgotten most is "asking" a person to do something and thereby establishing "consent". In situations such as this, ask him to sit in the car, advise him of his Fourth Amendment right regarding the seizure of his person and give him his Miranda rights so you can establish without doubt that he waived his Fourth, Fifth and Sixth Amendment rights.

The following cases involving investigative stops and/or pat-down searches are all mentioned in this opinion and should be reviewed:

1. Coleman v. State (Legal Bulletin No. 3)--investigatory stop and articulable facts.
2. Anchorage v. Cook (Legal Bulletin No. 26)--emergency seizure of a person from a vehicle.
3. Dunaway v. New York (Legal Bulletin No. 33)--illegal seizure of person lacking probable cause to arrest and subsequent confession suppressed.
4. Free v. State (Legal Bulletin No. 39)--seizure and subsequent pat-down upheld because of articulable facts.
5. Ozena v. State (Legal Bulletin No. 42)--stop-and-frisk upheld based on articulable facts.
6. Henry v. State (Legal Bulletin No. 45)--seizure of person and subsequent confession upheld because of consent.