



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 339

May 13, 2009

INVESTIGATIVE STOP OF VEHICLE SUPPORTED BY REASONABLE SUSPICION

Reference:

State of Alaska
v.
Michael Miller

Alaska Supreme Court
Opinion No. S-12483
P.3d
May 3, 2000

IN THIS CASE THE ALASKA SUPREME COURT REVERSES (SEE MILLER v. STATE, BULLETIN NO. 317) THE COURT OF APPEALS. THE SUPREME COURT RULES THAT THE JUNEAU POLICE OFFICER DID HAVE A REASONABLE SUSPICION THAT A DOMESTIC VIOLENCE INCIDENT HAD OCCURRED AND WAS JUSTIFIED IN MAKING AN INVESTIGATIVE STOP OF THE SUSPECT VEHICLE.

FACTS:

Officer Keith Mickelson, of the Juneau Police Department was dispatched to the parking lot of Henry's Bar to investigate a possible domestic violence. A female citizen had reported that a couple was "fighting, not like physical punching, but like yelling, I mean fighting and pointing, and like waiving of arms." The caller also indicated that the man and woman were a couple or possible siblings. The caller also indicated that the couple was standing in front of a white Subaru WRX with its doors open. The Juneau police dispatcher had relayed all of this information to Officer Mickelson who was a short distance away from Henry's Bar.

Officer Mickelson approached the parking lot within moments; he noted people getting into a white Subaru. As Officer Mickelson entered the parking lot, the Subaru was already driving across the lot toward him. The officer stopped the vehicle which was occupied by MILLER, who was driving, and two females. He asked MILLER "what was going on" with the argument at Henry's Bar. The two females gestured that everything was fine. Officer Mickelson noticed MILLER's eyes were bloodshot and watery and detected the smell of alcohol. MILLER was arrested and charged with driving under the influence, refusal to submit to a chemical test, and two counts of reckless endangerment. MILLER argued (see bulletin no. 317) that the officer did not have an objective basis to believe that the argument had led, or would lead to a crime. The State argued that the officer, who had testified that in his experience, a verbal dispute always precedes a physical one, had a

reason to believe that a domestic disturbance had taken place moments before he (Officer Mickelson) arrived at the scene.

The Court of Appeals ruled in favor of MILLER ruling that an investigative stop is permitted only if an officer has a "reasonable suspicion that eminent public danger exists or serious harm to persons or property has recently occurred." (Citing *Coleman v. State* - see bulletin no. 3.)

The Attorney General appealed the Court of Appeals decision to the State Supreme Court.

ISSUE:

Did the officer have an objective basis to believe that the reported argument had led, or would lead, to a crime?

HELD: Yes - although Officer Mickelson did not observe the dispute personally, the information he had was sufficient to establish a substantial possibility that a domestic violent assault was occurring, had occurred, or was about to occur (physical contact is not a necessary element of domestic violence or of assault in the fourth degree).

REASONING:

1. Under the standard set out in Coleman v. State (see bulletin no. 3), a police officer in Alaska may conduct an investigative stop when the officer has "a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred. The officer must have "some criminal level of objective justification for making the stop."

2. Because domestic violence can include an incident in which an individual makes a verbal threat that places a partner or sibling in fear of imminent physical injury and because the 911 report suggested that all those elements could have been present in this case, we conclude that it was reasonable for the police dispatcher to believe that a crime involving domestic violence had been committed, was being committed, or would soon be committed, and to convey this information to Officer Mickelson.

3. The justification required to an investigative stop of a vehicle leaving the scene of a suspected crime may be lower than the justification required for a police officer to stop and question on foot because in such a situation, if action is not immediately taken, there is not likely to be another chance. In short, the alleged crime (in this case) was quite immediate to the investigative stop.

May 15, 2009

Page 3

4. Here there is no indication that the purpose of the investigative stop was to conduct a search for evidence that MILLER was driving under the influence nor that Officer Mickelson's suspicion of domestic violence was a mere pretext. It was only as Officer Mickelson ensured that no one in the vehicle required assistance as a result of the argument that his attention was drawn to the evidence that MILLER was driving while intoxicated.

NOTE:

You should compare/contrast this case with Jones v. State, bulletin no. 243. In Jones, which the Supreme Court cites in this (MILLER) case, police responded to a 911 call that reported an argument between a tenant and a landlord. When police separated them, the tenant - Jones - attempted to walk away. Jones was handcuffed and search; cocaine was seized. The evidence was suppressed because the police had no indication that Jones had assaulted the landlord or that he had committed any illegal act and therefore had no basis for requiring Jones to remain at the scene. A review of Coleman v. State, bulletin no. 3, decided by the Alaska Supreme Court in 1976 should also be reviewed. This is the case that set the Alaska Standard for investigative stops.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 339 numerically under Section R of the manual.