



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 293

February 9, 2005

TRAFFIC STOP FOR EQUIPMENT VIOLATION LEADS TO DUI ARREST

Reference: Peter Nease
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1967
P.3d
January 28, 2005

FACTS:

A Juneau police officer observed Nease drinking at a local bar. About an hour later, the same officer saw Nease's vehicle parked at a restaurant. The officer also had contact with Nease about a week earlier when he clocked Nease's vehicle going about 75mph. By the time the officer was able to turn around, Nease was outside his vehicle, appeared intoxicated and denied he had been driving it. The officer took no action on that case, but did tell Nease that the next time he drove drunk he was going to get him.

By the time the officer returned to the restaurant in this case, Nease was pulling out of the parking lot. The officer followed Nease and observed no problems with his driving. When Nease stopped at a traffic light, however, the officer saw that one of his brake lights was not working. The officer pulled Nease over and determined that Nease was intoxicated; he was arrested for driving while intoxicated.

Nease argued that this was a pretext stop and the officer lacked probable cause to make the traffic stop.

ISSUE:

Under the facts known to the police office, was the stop of the car "objectively justified?"

HELD: Yes--this was not an illegal pretext stop.

REASONING:

1. Traffic code 13.AAC 04.035(c) requires rear brake lights to illuminate by application of the service or foot brake; this observation gave the officer probable cause to stop Nease for violation of the traffic code.

2. Even under the pretext doctrine, the precise issue is not the officer's subjective motivation for making the stop. Rather, the question is whether the officer departed from reasonable police practice (see Whren & Brown v. U.S., Legal Bulletin No. 202) when, having probable cause to stop Nease because of the broken brake light, he in fact did stop Nease. (emphasis added)

3. There is no evidence that the officer's contact with Nease exceeded the normal duration or scope of a traffic stop for an equipment violation.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

File Legal Bulletin No. 293 numerically under Section R of the manual.