



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 328
May 4, 2008

ARTICLE I SECTION 14 OF THE ALASKA CONSTITUTION
REQUIRES GREATER RESTRICTIONS ON POLICE WHEN
ASKING CONSENT TO SEARCH

Reference: Susan S. Brown Alaska Court of Appeals
v. Opinion No. 2157
State of Alaska _____ P.3d _____
April 18, 2008

FACTS:

Brown was stopped by a state trooper for a traffic infraction (insufficient illumination of her rear license plate). However, Brown was not informed of the reason for the stop. Brown was asked to produce her driver's license and the trooper took the driver's license back to his patrol car to see if the license was valid and if there were any outstanding warrants for Brown's arrest. Brown was validly licensed and there were no warrants. The trooper decided to issue Brown a warning. But rather than explaining the reason for the stop and announcing his decision to let Brown off with a warning, the trooper instead asked Brown for permission to search her person and her vehicle for weapons and drugs. Brown gave permission, the search was conducted, and the trooper found a crack pipe in the lining of her coat. The trooper arrested Brown and, incident to this arrest, he searched Brown's purse (which was sitting on the passenger side of her car). Inside the purse, the trooper found cocaine in a cigarette box.

At a later hearing, the trooper testified that he worked traffic patrol from 11:00 p.m. to 7:00 a.m., and that it was his practice to try to conduct a few consent searches each night during traffic stops. When he asked Brown for permission to conduct the search, he was simply following this practice of randomly seeking permission to search.

Brown argued that the circumstances surrounding her encounter with the trooper were implicitly coercive, and that her consent to the search was therefore not valid. The State argues that this "consent" issue has been addressed by the U.S. Supreme Court, who upheld such searches under the Fourth Amendment. Brown's argument is she should be afforded more rights under Alaska's Constitution.

ISSUE:

Does the Alaska Constitution impose greater restrictions on a police officer's authority to request a motorist's permission to conduct a search during a routine traffic stop?

HELD: Yes - - an officer's questions about other potential crimes, and an officer's request for permission to conduct a search, are significant events under the search and seizure provisions of the Alaska Constitution, Article, I, Section 14.

REASONING:

1. Under the circumstances presented in this case, the officer conducting the traffic stop was prohibited from requesting Brown's permission to conduct a search that was (1) unrelated to the basis for the stop and (2) not otherwise supported by a reasonable suspicions of criminality.
2. Federal law does not afford sufficient protection to motorists who are asked to consent to a search of their person, their vehicle, or their belongings during a traffic stop. Article I, Section 14 (Alaska Constitution) provides greater protection to the citizens of this state than they would otherwise have under the Fourth Amendment.
3. It is "virtually impossible" to drive a motor vehicle in this country and not unwittingly commit some infraction of the motor vehicle laws. Motorists are giving consent (for search) in such large numbers that it is no longer reasonable to believe that they are making the kind of independent decisions that lawyers and judges typically have in mind when they use the phrase "consent search."
4. The facts of this case are an example of an apparently ongoing and unjustified infringement of the privacy rights of Alaska citizens.

NOTE:

It is apparent in this decision that the Court of Appeals "is convinced that the U.S. Supreme Court's interpretation of the Fourth Amendment fails to adequately safeguard our citizens" right to privacy, . . . fails to adequately protect citizens from unwarranted government intrusion, and . . . unjustifiably reduces the incentive of police officers to honor citizens constitutional rights."

It is not known at the writing of this bulletin if the Attorney General intends on appealing this decision to the Alaska Supreme Court.

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