





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 289

December 5, 2004

INVESTIGATIVE SEIZURE OF PERSON SUSPECTED OF VIOLATING PAROLE CONDITIONS

Reference: Steven D. Reichel

V.

State of Alaska

Alaska Court of Appeals

Opinion No. 1955

____P.3d_

November 12, 2004

FACTS:

While conducting a bar check, Homer police observed Reichel on the premises. One of the officers was aware that Reichel was on probation/parole for a previous DUI felony. One of the conditions of his parole forbade him to consume alcohol or be on any premises where alcohol is served.

Reichel left the bar when he noticed the officers. The officers followed him outside, stopped him and held him while they attempted to contact his parole officer to ask what to do. Within twenty minutes, the officers succeeded in speaking with Reichel's parole officer. The parole officer directed police to arrest Reichel for parole violation. During a search of Reichel's person incident to his arrest, police discovered cocaine in his pocket. He was subsequently charged and convicted for possession of cocaine.

Reichel argued that drugs found on his person should be suppressed because police did not have the authority to seize him for the parole violation.

ISSUE:

Did police have the authority to conduct an investigative stop because they suspected Reichel was violating conditions of his parole? December 5, 2004

HELD: No--Alaska police officers' authority to conduct investigative stops is more restrictive than under Federal law.

REASONING:

- $\underline{1.}$ Police officers can conduct an investigative stop only if they have reasonable suspicion that imminent public danger exists or that serious harm to persons or property has recently occurred.
- $\underline{2.}$ In this case, the investigative stop was not supported by a reasonable suspicion that Reichel was about to drive while intoxicated.
- <u>3.</u> Prisoners released on parole have the same protections against government searches and seizures as other citizens. Exceptions are: (a) when reasonably conducted searches and seizures are required by the legitimate demands of correctional authorities, and (b) when the authority to conduct such searches and seizures is expressly set forth in the conditions of parole by the parole board.
- 4. The Alaska Supreme Court held in Roman v. State, Legal Bulletin No. 7, that the right to perform such searches is limited to parole officers; and it does not grant police officers independent authority to require parolees to submit to a search, unless directed to do so by a parole officer.
- $\underline{5.}$ The facts known to police when they stopped Reichel did not provide reason to believe an imminent public danger existed or that serious harm to persons or property had just occurred.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons, Vehicles and Things," and Section N, "Probation Officers and Private Persons Searches," of your Contents and Text. File Legal Bulletin No. 289 numerically under Section R of the manual.