DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 209
February 17, 1997

WARNING NOT REQUIRED FOR CONSENT TO SEARCH

Reference: Ohio v. Robert D. Robinette — United States Supreme Court No. 95-891 November 18, 1996

FACTS:

Robinette was stopped for speeding and given a verbal warning. After returning Robinette's driver's license to him, the officer asked Robinette if he was carrying illegal contraband, weapons or drugs in his car. Robinette answered "No" to these questions, after which the officer asked if he could search the car. Robinette consented to the search. The officer discovered a small amount of marijuana and, in a film container, a pill which was later determined to be methamphetamine. Robinette was arrested and charged with knowing possession of a controlled substance.

Robinette argued that the search resulted from an unlawful detention and the police officer should have advised him that he had a right to refuse to have his car searched.

ISSUE:

Does the Fourth Admendment require that a lawfully seized defendant be advised that is is "free to go" before his consent to search will be recognized as voluntary?

HELD: No.

REASONING:

1. It would be thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning, so too would it be unrealistic to require police officers to always inform detainees that they are free to go before a consent search may be deemed voluntary.

2. The Fourth Amendment test for a valid consent to search is that the consent be voluntary. Voluntariness is a question of fact to be determined from all the circumstances.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 209 numerically under Section R of the manual.