



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 367

May 14, 2013

INVESTIGATORY SEIZURE OF PERSON JUSTIFIED BY REASONABLE SUSPICION OF CRIMINAL ACTIVITY

Reference:

Nicholas Stepovich

Alaska Court of Appeals

Opinion No. 2391

v.

April 26, 2013

State of Alaska

FACTS:

Fairbanks police officer, Lockwood was on patrol duties in the early morning hours when he saw two men standing near a dumpster behind the Big I Bar. The men were facing each other and standing very close together - perhaps 18 inches apart. Their heads were bent forward, toward each other and their hands were cupped at approximately chest level, and their hands were either touching or nearly touching. The men were staring intently downward toward their hands.

When Officer Lockwood spotted the men, he hit the brakes of his patrol car. Both men looked up, and had expressions of "sheer panic", as if they had been "caught in a cookie jar." The men immediately separated from each other, and put their hands in their pockets.

Officer Lockwood got out of his patrol car and directed both men to stop; they continued walking and he said "Fairbanks police: Stop, hold it right there. ... Don't go in the bar. Stop right there; hold on."

One of the two men, STEPOVICH, rounded the dumpster; Lockwood saw him pull his hands out of his pocket and extended them in front of him. When STEPOVICH emerged from behind the dumpster, his hands were in plain view and he appeared relaxed. He said: "what's the big deal? I was just taking a leak."

A backup officer arrived and Lockwood went around the side of the dumpster where STEPOVICH had been and found a paper slip of cocaine lying on top of the fresh snow. Based on this discovery STEPOVICH was arrested.

During the search incident to the arrest, Lockwood discovered and seized \$865 in cash and a small plastic jar of gold nuggets worth between \$8,000 and \$9,000.

STEPOVICH was transported to the Fairbanks police station where Officer Lockwood enlisted the aid of Trooper Zeisel and his canine Argo. Argo, who is trained to detect marijuana, cocaine, heroin, and methamphetamine, alerted on both the cash and nuggets.

STEPOVICH was charged with possession of cocaine and attempted evidence tampering (for dropping the slip of cocaine to the ground behind the dumpster).

STEPOVICH argues that the evidence must be suppressed because it was seized as a result of an illegal investigative seizure of his person and that the evidence pertaining to the dog sniff should likewise be suppressed.

ISSUE:

Was the evidence used against him the fruit of an unlawful investigative stop that was not supported by reasonable suspicion of identifying criminal activity?

Held. No -- given the location (parking lot behind a bar) and the time of day (one o'clock in the morning) these unusual circumstances made it reasonable for the officer to take steps to find out what was going on by stopping his patrol car and asking questions.

REASONING:

1. The encounter between STEPOVICH and Officer Lockwood has two parts: (1) Lockwood's observation of STEPOVICH and (2) the second man standing close together, face-to-face beside the dumpster, with their hands cupped in front of them.
2. Based on his observations, Officer Lockwood concluded that he was probably witnessing a drug transaction rather than witnessing two men sharing a cigarette, or two men who had gone outside to urinate.
3. This court has held that the illicit sale of drugs qualifies as an "eminent public danger" for purposes of the Coleman test. (See Coleman v. State Bulletin no. 3.)
4. The fact that Argo alerted to the cash and to the jar of gold nuggets meant that both of these items gave off one of the four smells that Argo had been trained to detect. The Trial Court Judge did not abuse his discretion when he decided to admit this evidence but to instruct the jurors to view this evidence with caution.

The court also cited: Majaev v. State, bulletin no. 22, which rules a seizure occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen; LeMense v. State bulletin no. 117, involving the investigatory seizure of luggage at the airport for drug dog detection sniff; and State v. Coon bulletin no. 231, concerning the admitting of evidence generally accepted within the scientific community (here the alert by the dog Argo and his training to detect drugs).

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