



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 350

May 28, 2010

### OWNER'S CONSENT TO SEARCH STOLEN VEHICLE

**Reference:**

Marteshia Clark  
v.  
State of Alaska

Alaska Court of Appeals

Opinion No. 2264

P.3d

May 21, 2010

**FACTS:**

Susan Roatch notified Fairbanks Police that her vehicle had been stolen; she implicated a woman named "Crystal" in the theft. Police located the vehicle parked on a street in downtown Fairbanks. The police decided to park about a half a block away to see if any suspects would return to the car.

About fifteen minutes later, Marteshia Clark and Crystal Thomas approached the stolen car. Thomas got into the driver's seat and Clark sat in the passenger seat. Police ordered the women out of the car, handcuffed them, and placed them in the back seat of two different police cars.

Roatch, the owner of the stolen vehicle, came to the scene. She said she had not given Thomas permission to drive her vehicle. Roatch gave the police permission to search her vehicle for illegal drugs or weapons. Roatch denied ownership of a number of items, including a metal cigarette case which was decorated with a design of marijuana leaves. When the case was opened, a police officer discovered three bindles of cocaine inside. Thomas denied ownership of the case. After being transported to the Fairbanks Jail, Clark told the officers that she did not know that the car was stolen and also admitted that the cigarette case was hers and that she was planning to trade the cocaine in the case for some marijuana.

Clark was subsequently charged with the drug offense. She moved to suppress the evidence as an illegal seizure and the statements she made related to the seizure.

**ISSUE:**

Does Roatch's consent to search her vehicle fall within an exception to the warrant requirement?

**HELD:**

Yes. A passenger has no expectation of privacy in containers left in a stolen vehicle.

**REASONING:**

1. The police may conduct a warrantless search based on the voluntary consent of a person who has valid control of the place to be searched. An owner's general consent to the search of a vehicle for drugs includes consent to open closed containers found in the vehicle. (emphasis added)
2. Clark had a reduced expectation of privacy in the cigarette case left in the backseat of a stolen vehicle that she had no permission to be in.
3. The officer could reasonably conclude that the owner's general consent to the search of her vehicle included the authority to open the cigarette case.

**NOTES:**

You may want to review the following cases that the Court of Appeals cited in this decision: Hilbish v. State (Bulletin no. 189); visitor had authority to consent to search of yard (lifting a tarp) where they were camped; Florida v. Jimeno (Bulletin no. 159); driver's consent to search his vehicle included unlocked containers within the vehicle; Wyoming v. Houghton (Bulletin no. 232); search of a passenger's personal belongings inside a vehicle based on probable cause to believe it contained contraband; Crawford v. State (Bulletin no. 279); both Court of Appeals and Supreme Court upheld search of center console of vehicle based on police reason to believe it contained a weapon.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 350 numerically under Section R of the manual.