

ESSAY QUESTION NO. 8

Answer the question in booklet No. 8

Officer Smith was on routine patrol at midnight when he drove into the Westside Park trailhead parking lot to see if there were any teenagers drinking beer. The parking lot had become a popular hangout for teenagers over the past several months and he had arrested several for drinking under age at that location.

Officer Smith saw a single car parked in the lot with one person in the car. Officer Smith could hear music coming from the open windows of the car and the driver appeared to be drinking a canned beverage. Officer Smith pulled his car up alongside David's car. Officer Smith saw the driver look over, realize he was a police officer, and reach down to start the car. Officer Smith turned on his overhead lights and got out of his car.

David, the driver of the car, turned the ignition off and waited. Officer Smith approached the driver's side window and told David that he wanted to see his driver's license and registration. David gave him both, and Officer Smith returned to his car to ask the dispatcher to run David's license for any outstanding warrants. After several minutes, the dispatcher advised Officer Smith that David's license was suspended. Officer Smith told David that his license was suspended and that he needed to get out of the car. Officer Smith leaned David up against the side of the patrol car and began patting him down. As he was patting David's pockets, he asked David if he knew his license was suspended, and David said, "Yeah. I just haven't gotten around to dealing with it yet." Officer Smith then handcuffed David and put him in the back of his patrol car.

Officer Smith then searched David's car. Under the driver's seat, Officer Smith found a clear sandwich bag of what he immediately recognized as marijuana. Officer Smith ultimately charged David with both Driving with a Suspended License and Misconduct Involving a Controlled Substance.

1. Discuss the arguments David should make in a motion to suppress the admission of the marijuana and his statement to Officer Smith.

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CRIMINAL LAW

There are four arguments that David should make in a motion to suppress: that the stop was bad because Officer Smith did not have a reasonable suspicion, that Officer Smith violated *Miranda* when he interrogated David, that Officer Smith conducted an unconstitutional search of the car, and fourth, that the marijuana and David's statement were tainted by the illegality of Officer Smith's initial stop.

I. The Investigatory Stop (30 points)

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures. Evidence obtained from an unconstitutional seizure is inadmissible. *Hartman v. State, Dept. of Admin., Div. of Motor Vehicles*, 152 P.3d 1118, 1122 (Alaska 2007).

A. The Seizure

There are three types of contacts between police and private citizens: generalized requests for information, investigatory stops, and arrests. *Howard v. State*, 664 P.2d 603, 608 (Alaska App. 1983). An investigatory stop must be supported by reasonable suspicion, while a generalized request for information, such as an on-the-scene investigation, does not. *Id.* This question raises the issue of the dividing line between a generalized encounter and an investigatory stop.

An encounter between a police officer and a citizen becomes a type of seizure called an investigatory stop when, in light of the totality of the circumstances, a reasonable person would not feel free to leave. *Ozhuwan v. State*, 786 P.2d 918, 920 (Alaska App. 1990). In *Ozhuwan*, a police officer saw two cars positioned driver's door to driver's door near a boat launch at night. *Id.* The officer partially blocked the exit by positioning his patrol car between the cars and the exit to the boat launch area. *Id.* He then turned on his high beam headlights and his overhead red lights. *Id.* The court of appeals concluded that a seizure occurred because a reasonable person would not feel free to leave under these circumstances.

The facts in the question are similar to, but not exactly the same as, those in *Ozhuwan*. Officer Smith pulled up next to David's car in the parking lot. On one hand, he was not blocking David's exit the way the officer in *Ozhuwan* was. And he did not have his overhead lights on. So initially, at least, Officer Smith's actions did not amount to an investigatory stop. On the other hand, when David put down his drink and reached down to turn the ignition on, Officer Smith turned on his overhead lights and got out of the car.

A reasonable person would probably assume at this point that they were not free to leave. Officer Smith's action in turning on his overhead lights was an official show of force, and his getting out of the car indicated that he wanted to talk to David.

B. Reasonable Suspicion

The Alaska Supreme Court has held that an investigatory stop is reasonable when the officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred. *State v. Miller*, 207 P.3d 541, 544 (Alaska 2009). An inchoate suspicion or hunch is not sufficient to justify a stop. *Id.* The officer must be able to point to specific and articulable facts justifying the stop. *Id.* When reviewing a stop, a court must consider the officer's experience as well as all of the circumstances known to the officer. *Id.* The supreme court first announced this standard in *Coleman v. State*, 553 P.2d 40 (Alaska 1976).

In applying the *Coleman* standard, the supreme court considers four questions: (1) How serious was the alleged crime to which the officer was responding? (2) How immediate was the alleged crime to the investigative stop? (3) How strong was the officer's reasonable suspicion? and (4) How intrusive was the stop? *State v. Miller*, 207 P.3d 541, 544 (Alaska 2009); *see also State v. G.B.*, 769 P.2d 452, 455-56 (Alaska App. 1989).

(1) How serious was the alleged crime to which the officer was responding?

Officer Smith drove into the trailhead parking lot to investigate the possibility of underage drinking. The crime of drinking under age is not itself particularly serious. The first and second offenses are violations punishable with probation, fines, community work service, education or counseling but not imprisonment. AS 04.16.050. But underage drinking in a parking lot implicates driving under the influence, which is a serious offense. This factor tends to support the officer's investigation.

(2) How immediate was the alleged crime to the investigative stop?

Officer Smith's information was that the parking lot had become a popular hangout for underage drinking over the past several months. But he was not investigating a specific report. He was merely looking for suspicious behavior when he pulled in to the parking lot. This factor favors a finding of no reasonable suspicion

(3) How strong was the officer's reasonable suspicion?

Officer's Smith's suspicion was not especially strong. He had no particularized suspicion when he pulled into the parking lot. He did see some behavior that could warrant further investigation, for he heard music coming from the open window of a parked car and saw the occupant drinking what appeared to be a canned beverage. On the other hand, nothing indicates that he could estimate the driver's age, nor does anything indicate that he could identify the beverage as alcoholic. These facts might bolster a finding of reasonable suspicion, but they are probably not sufficient on their own.

(4) How intrusive was the stop?

In *State v. Miller*, 207 P.3d 541, 549 (Alaska 2009), the police officer stopped a moving vehicle in a parking lot and conducted a brief interview of the occupants through the open window of the car. The court concluded that this stop was minimally intrusive. *Id.*

Officer Smith's action was more intrusive than that in *Miller* because he asked for and took possession of David's license and registration. The mere request for identification does not render a stop a seizure when it does not appear that the identification was retained for an unnecessarily long time. *Pooley v. State*, 705 P.2d 1293, 1306 (Alaska App. 1985). In the present case, Officer Smith took possession of David's license and registration which effectively prevented him from leaving. He also kept them for several minutes so that he could conduct a further investigation. He did not merely look at them to positively identify David.

David should argue that the stop was unconstitutional because Officer Smith did not have reasonable suspicion to believe that recent harm had occurred.

II. David's Statement (25 points)

The Alaska Supreme Court requires *Miranda* warnings be given as a matter of state constitutional law. *Munson v. State*, 123 P.3d 1042, 1047-1049 & n. 48 (Alaska 2005). The failure to provide proper warnings or to obtain a waiver of the rights described in the warnings will generally result in the exclusion of the statement. *Id.* at 1047.

An officer must give a person the *Miranda* warnings if the officer questions the person while the person is in custody. *Munson*, 132 P.3d at 1047. "Custody" under *Miranda* means something more than the level of detention involved in a typical traffic or investigatory stop. *Blake v. State*, 763 P.2d 511, (Alaska App. 1988). A person is in custody if a reasonable person in the same circumstances would not feel free to break off the interrogation and

leave. *Hunter v. State*, 590 P.2d 888, 895 (Alaska 1979). A court will look at three groups of facts to determine whether a person is in custody:

The first are those facts intrinsic to the interrogation: when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request, or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Id.

The facts pertaining to the questioning itself are mixed but overall favor a finding that David was in custody. The interrogation occurred in a parking lot in public and was very brief. There was only one officer, Officer Smith, and he asked only one question. On the other hand, Officer Smith had just told David that his license was suspended, which implied that David had committed a crime by driving to the parking lot. He told David to get out of the car and to lean against the patrol car. Officer Smith then began patting David down. It is unlikely that a reasonable person would have felt free to leave at that point. A reasonable person would most likely have assumed that they were being arrested.

The facts indicate that David was not in custody until he was actually told to get out of the car. He apparently drove to the parking lot on his own, and his initial contact with Officer Smith did not amount to anything more intrusive than a traffic stop.

The facts after the interrogation indicate that David was in custody. Officer Smith arrested him and placed him in the back of the patrol car.

David should argue that he was in custody when Officer Smith asked him if he knew his license was suspended and that Officer Smith should have given him the *Miranda* warnings. Because Officer Smith didn't, the court will probably suppress the statement.

III. The Search of The Car (25 points)

In 2009, the United States Supreme Court decided *Arizona v. Gant*, 556 U.S. 332 (2009). The police arrested Gant for driving with a suspended license. After placing him in a patrol car, the police searched his vehicle and found cocaine. The Supreme Court held that the police may only search a vehicle incident to a recent occupant's arrest in two circumstances. First, the police may search if the arrestee is unsecured and within reaching distance of the passenger compartment of the car at the time of the search. *Id.* at 343. And second, the police may search if it is reasonable to believe that there might be evidence of the crime of arrest in the car. *Id.* The Supreme Court concluded the search was unlawful because Gant did not have any access to his car when it was searched and because the police arrested him for driving with a suspended license, an offense for which police could not reasonably expect to find evidence in Gant's car. *Id.* at 344.

Gant changed the law in Alaska regarding searches of vehicles incident to arrest. Prior to *Gant*, the Alaska Supreme Court allowed the police to search a vehicle even after the occupant had been handcuffed and placed in the back of a patrol car. See *Crawford v. State*, 138 P.3d 254, 261-62 (Alaska 2006). But the United States' Supreme Court sets the minimum standards for searches and seizures.

In the present case, Officer Smith handcuffed David and placed him in the back of a patrol car. And then he searched David's car. This search violated the first prong of *Gant* because David had no access to his car at the time of the search. The search also violated the second prong because Officer Smith arrested David for driving with a suspended license, an offense for which he could not expect to find any evidence in the car.

IV. Fruit of the Poisonous Tree (20 points)

The exclusionary rule applies to "evidence obtained indirectly as the result of an unlawful search or seizure as well as evidence directly obtained thereby." *Erickson v. State*, 507 P.2d 508, 516 (Alaska 1973). Once a causal connection is made between the evidence and the unconstitutional act, the evidence must be suppressed unless the state can show that the evidence was acquired through an independent source or inevitable discovery or the connection was sufficiently attenuated. *Id.*

In the present case, both David's statement and the marijuana were the product of the original unconstitutional seizure of David during the investigatory stop. Officer Smith would not have interrogated David, nor would he have searched David's car if he had not conducted the stop and determined that David had a suspended license. None of the exceptions applies because

there was no other source for the information and there was no alternative investigation going on. Moreover, the interrogation and the search of the car occurred immediately after the illegal stop, so there was no attenuation of the taint.